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C A N A D A)
PROVINCE OF ALBERTA)
TO WIT:)

IN THE MATTER OF THE PUBLIC INQUIRIES ACT AND THE ALBERTA HOUSING CORPORATION

The Honourable Mr. Justice J. M. Cairns — Commissioner.

R. A. McLennan, Esq., Q.C., — Commission Counsel.

G. A. C. Steer, Esq., Q.C., — For R. B. Orysiuk.

J. E. Redmond, Esq., Q.C., — For E. P. Achtem.

H. A. Bodner, Esq., Q.C., — For Alberta Housing Corporation.

E. D. Stack, Esq., Q.C., — For Gateway Building Supplies.

A. T. Murray, Esq., — For William Weir.

W. A. Stevenson, Esq., and A. H. Lefever, Esq., — For D. McColl.

DATE: May 21, 1974

HELD AT: Edmonton, Alberta.

VOLUME 6
(Pages 516 - 612)

Supreme Court Reporters
EDMONTON - ALBERTA

I N D E X

VOLUME 6

MAY 21, 1974

WITNESSES:

ANTHONY THOMAS MELVYN

Examination by Mr. McLennan 516

JOHN McLEAN CAMPBELL CURRIE

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EDWARD PETER ACHTEM

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PROCEEDINGS before The Honourable Mr. Justice J. M. Cairns, at Courtroom 15, The Law Courts, in the City of Edmonton, Province of Alberta, commencing at 9:40 a.m., Tuesday, May 21st, A.D. 1974.

MR. McLENNAN: My Lord, before we start might I substitute a Xerox copy of Exhibit 17 for the original, that is the minutes of the meeting of the Alberta Housing Urban Renewal Corporation of Thursday, September 4th.

THE COMMISSIONER: Are those all the minutes that could possibly do with this?

MR. McLENNAN: I would not want to go that far, but they are the only minutes that have to do with the German bank loan, the Main Bontal Bank loan.

THE COMMISSIONER: I suppose no one has any objection to that copy. There is nothing in the minutes anyway.

MR. McLENNAN: Not a great deal, sir.

Mr. Melvyn.

ANTHONY THOMAS MELVYN, sworn, examined by Mr. McLennan:

Q Mr. Melvyn, what is your employment, sir?

A I am employed with the Department of National Revenue, Appeals Officer, Taxation.

Q Now you in conjunction with Mr. Simpson acquired an option on a piece of property in the Mill Woods area from Mr. and Mrs. Mueller?

A Yes, we did.

Q And the date of that, sir, do you know?

A Yes, we did.

Q And the date of that, sir, do you know?

A I believe it was October 11, 1969.

Q And you subsequently sold part of those lands to Edward Achtem?

A Yes, we did.

Q That was on the 15th of October, 1969?

A I believe that's the date.

Q I am showing you what appears to be the original Offer to Purchase.

A Yes, that's correct.

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A.T. Melvyn - Examined by Mr. McLennan

Q I'm sorry - your memory regarding the date you took the option appears to be wrong by one day. It was the 10th of October?

A Oh, my mistake.

Q Now, in five days then you turned this property over to Mr. Achtem?

A Right.

Q Could you tell the inquiry as to how you managed to do that; what happened during that five day period?

A I believe Mr. Lieber phoned me.

Q Mr. Frank Lieber?

A Yes.

Q Was he your solicitor?

A Yes, he was and he told me that Mr. Achtem wanted to buy our option.

Q How did Mr. Frank Lieber become aware that you had an option?

A When we acquired the option I gave Mr. Lieber the option to handle it for us as our solicitor.

Q What did he handle for you?

A He was going to look after the option and when it came due he was going to handle the legal part of it for us.

THE COMMISSIONER: Did he draw it?

A No, we drew it up ourselves.

Q MR. McLENNAN: All right, when did you give it to Mr. Lieber do you know; assuming that you took it on the 10th of October?

A It would probably be a day or two after that as far as I can remember.

Q All right, so he phoned you very shortly thereafter and said that Mr. Achtem wanted to acquire it?

A That's right.

Q And did you then instruct Mr. Lieber as to what to do?

A On his advice we decided to sell it.

THE COMMISSIONER: Would you mind turning around please the witness stand is a way over.

Q MR. McLENNAN: On his advice you decided to sell it?

A Right.

Q What were you offered; did you receive an offer at that point?

A Yes, we received an offer of $100.00 over our option price.

Q $100.00 an acre?

A Right.

Q That was $16,000.00 more than you paid for it?

A No, it was fifteen since we didn't have the full 160 acres at the time.

Q Well, didn't you have an option on both pieces at 150 acres and 10 acres?

A The Muellers didn't want to sell the 10 acres immediately; they wanted to farm for another year as far as I understood so we, our option indicated that we would have first chance to buy the 10 acres at the same price, the agreed price.

Q That is $2,500.00 an acre?

A Yes.

Q Do you have a copy of that agreement?

A No, I believe it is in the - we have only the one option; I

A (Cont.) believe it is in that option.

Q Okay, yes, I'm sorry. You took an option on the quarter section reserving approximately 10 acres including buildings plus the first option on the 10 acres at $2,500.00 an acre?

A Correct.

Q Did you ever deal directly with Mr. Achtem?

A The only time I talked to Mr. Achtem with regard to this sale was in the office of Frank Lieber when the transaction was - when I signed the sale agreement.

Q What was the nature of that conversation?

A We just decided to sell it to Mr. Achtem at the price of $2,600.00 an acre.

THE COMMISSIONER: I think what Mr. McLennan was asking you was whether Mr. Lieber made an arrangement with Mr. Achtem?

A I believe Mr. Achtem, Mr. Lieber and myself were in the office when the transaction was - when we agreed on the $100.00 over the option price.

Q MR. McLENNAN: Well, could you tell me how that came about, sir? You only had the property for three or four days. Why did you agree to take a hundred dollar markup and sell it?

A As I mentioned at Mr. Lieber's advice.

Q Did you make any inquiry as to what the advice was based on?

A He felt, if I can remember correctly, he suggested that this property was bought for a housing corporation - I mean, pardon me, for a housing development.

Q What does that mean or what did it mean to you?

A Well, he indicated that if we didn't sell that this was probably bought up either by the City and or some government for a housing development and if we didn't sell it it would be expropriated at some time.

Q That is what he told you?

A Yes, I believe those are - I can't remember exactly.

Q Well, did you sell with the idea that if you didn't sell it would be expropriated?

A Right, I believe that's, that was the reason.

Q In any event $15,000.00 profit in three days wasn't bad anyway?

A I agree.

Q Can you tell me, sir, how you and Mr. Simpson came to acquire this option in October of 1969?

A Well, Mr. Simpson and myself were looking for land for an acreage development and the reason we went in this particular area is because Mr. Simpson knew the farmers in that area. He lived there before.

Q Twenty-five hundred and acre was a pretty healthy price to pay for land at that time?

A Yes, it was.

Q And it would have required you and Mr. Simpson coming out with something like $375,000.00 before the 10th of January which was 90 days?

A Right.

Q Were you and Mr. Simpson in a position to come up with $375,000.00 cash?

A No, we were going to take it to an investment group or form

A (Cont.) an investment group.

THE COMMISSIONER: What was that figure?

MR. McLENNAN: $375,000.00.

Q MR. McLENNAN: The following spring, Mr. --

THE COMMISSIONER: Did you intend to keep it?

A No, we were going to get a group of investors together to pay for the land.

THE COMMISSIONER: This is on this hundred and sixty acres?

A 150 acres.

THE COMMISSIONER: 150 acres?

A Yes.

Q MR. McLENNAN: The following spring you sold the 10 acre parcel?

A Yes, we did.

Q For $5,000.00 an acre?

A Correct.

Q And you paid the Muellers twenty-five hundred an acre for it as well?

A Yes, we did.

Q So you made a twenty-five thousand dollar profit on the 10 acre parcel.

THE COMMISSIONER: To whom was that sold?

A Imperial Oil.

Q MR. McLENNAN: Now, to take that 10 acre parcel away from the quarter section you required a subdivision?

A Yes, we did.

Q Who handled the subdivision?

A I'm not sure, I believe it was Stewart and -?

Q Franckl and Associates?

A Oh, yes, correct.

Q And who paid for the subdivision?

THE COMMISSIONER: Who handled it?

MR. McLENNAN: Franckl and Associates, that is F-r-a-n-c-k-l; they are consulting engineers and surveyors.

A I am not sure who paid this particular bill.

THE COMMISSIONER: Well, who usually pays it Imperial Oil?

MR. McLENNAN: No, this would have been before Imperial Oil, sir.

A Before Imperial Oil. I know we did have some expenses we paid.

Q MR. McLENNAN: Somebody had to look after the subdivision, were you looking after it or was Mr. Achtem looking after it?

THE COMMISSIONER: Or was Mr. Lieber looking after it?

Q MR. McLENNAN: Or was Mr. Lieber looking after it?

A I'm not sure; I believe it was Mr. Lieber was looking after it.

Q All right and is it --

THE COMMISSIONER: This subdivision had to be completed before you sold to Mr. Achtem, didn't it?

A I believe so, yes.

THE COMMISSIONER: Someone would have had to have paid

THE COMMISSIONER: (Cont.) in order to give him the transfer.

MR. McLENNAN: Yes, sir, Mr. Achtem will be able to tell us about that, I am sure, from looking at his file.

Q MR. McLENNAN: Mr. Melvyn, is it your evidence that neither you nor Mr. Simpson to your knowledge had any information or notice or knowledge whatsoever that there was a land assembly going on in the area when you took this option from Mr. and Mrs. Meuller?

A Well, we didn't know in fact that there was an assembly, a land assembly going on but we knew something was going on because there was quite a bit of activity and we knew that several farmers had sold land and received substantial prices, a lot more than agricultural land was worth. So we knew something was going on.

Q Well, is it with that knowledge then that you took a 90 day option?

A Yes.

Q With the full expectation that within the 90 days you would be able to turn this over?

A Well, true, we didn't have too much to lose really.

Q You only paid a thousand dollars for the option?

A Yes.

THE COMMISSIONER: Yes, but you were going to make up your own development on it.

A Well, what I meant, if we couldn't raise the money we would lose the option and in fact lose our thousand dollars.

THE COMMISSIONER: If somebody else wanted to buy it you wouldn't go ahead with your own assembly then?

A No, I believe not.

Q Well, let's be frank about it.

A Yes.

Q MR. McLENNAN: And whatever information you acquired that made this a good bet or a good speculation that information was acquired only by Mr. Simpson from farmers in the area?

A Correct.

MR. McLENNAN: All right, thank you, sir; would you answer any questions my friends may have?

MR. REDMOND: Sir, I don't think I have any questions but I want to ask my client one question before I decide.

MR. REDMOND: No questions, sir.

MR. STEER: No questions.

MR. STEVENSON: No questions.

MR. McLENNAN: My Lord, it has been pointed out to me that I omitted a matter with Mr. Melvyn.

Q MR. McLENNAN: Mr. Melvyn, did you have an investment group at the time this option was taken, or were you going to form one?

A We were going to form one. We had completed an investment in Scott Haven prior to this.

Q With a group of persons?

A Yes.

Q Now, while this information, you say, that is that this was a hot area and wortha gamble of a thousand dollars to take an option, when that intelligence was obtained from farmers in the area by Mr. Simpson can you say with assurance, sir, that none of those farmers and none of that information came as a result of either your duties at the Income Tax Department or Mr. Simpson's duties at the Income Tax Department?

A No I can't, it didn't.

Q None at all?

A None at all.

Q So that if persons in the area who had received large cash offers for their land consulted the Income Tax Department as to whether or not the profit would be taxable, none of that information came to either your attention or Mr. Simpson's attention?

A No, no it hadn't.

MR. McLENNAN: Thank you, sir.

Yes that's all, thank you. Might the witness be excused.

THE COMMISSIONER: Yes, thank you very much.

(Witness Retires).

MR. McLENNAN: Mr. Currie.

JOHN McLEAN CAMPBELL CURRIE, sworn, examined by Mr. McLennan:

THE COMMISSIONER: I didn't get the witness's name.

MR. McLENNAN: Mr. Currie.

THE COMMISSIONER: John Currie, is it?

MR. McLENNAN: Yes, sir.

I should have drawn to your attention, sir, that Mr. Bodner has joined us as counsel representing the Alberta Housing Corporation and he will be taking some part in the proceedings, no doubt, henceforth. That is Mr. Harvey Bodner, Q.C.

Q MR. McLENNAN: Mr. Currie, what is your occupation, sir?

A I am Assistant Deputy Provincial Treasurer in the provincial government.

Q And what was your job in 1969 in September?

A I had a working title of the same, I was assistant to Fred Stewart, the Deputy Provincial Treasurer.

Q And do you have in your possession the file maintained by the Provincial Treasury Department in connection with the Main Bontal Bank loan by Alberta Housing and Urban Renewal

Q (continued) Corporation?

A Yes, I have.

Q Could you produce that please? I don't think we want to mark the whole file, Mr. Currie. Would you please advise the Inquiry as to what your file contains?

A We have a copy of the letter of August 15th of 1969 to Mr. Victor Farkas Realty Limited, investment consultants, Victoria Avenue, Montreal, Quebec, and it's from the Main Bontal Bank in West Germany. Do you want me to read the letter?

Q No, I believe --

A And there's a signature of acceptance dated August the 19th, '69, in Montreal by Mr. Orysiuk.

Q Just before you go on, Mr. Currie, that is Exhibit 15, sir. That is a copy of Exhibit 15, Mr. Currie?

A Yes, that's a copy of it.

Q And do you know how that came to be in your file, is there a covering letter?

A No, I don't really. We got this some time after that. When we started collecting information.

THE COMMISSIONER: I'm sorry, when did you get it?

A I don't really know what date because we subsequently started to pick up a file of the information on the German bank loan, but it was much later than the actual loan itself.

Q MR. McLENNAN: So that you didn't have that in early September, 1969?

A We wouldn't have had a copy of this letter in '69.

Q All right, carry on then.

A The next item I have on the file is minutes of a meeting, number 7, of '69 dated September the 4th of 1969 of the Alberta Housing Corporation.

Q All right, that's Exhibit 17, My Lord.

Yes, carry on.

A These were, Mr. Stewart was one of the directors of the Alberta Housing Corporation and was sent these minutes by the Corporation.

Q Yes, carry on.

A Next item is a copy of an Order-in-Council, I'm sorry, before that a copy of By-law No. 5 being a by-law authorizing the borrowing of money by the issue and sale of debentures of the Corporation, the aggregate principal amount not to exceed $15 million, it was dated September the 4th of 1969 and signed by the Chairman and by Mr. Orysiuk, as the Executive Director.

Q That's Exhibit 20, My Lord.

A And that was attached to Order-in-Council No. 1638, of '69, which authorized the Provincial Treasurer to guarantee any debentures issued under this by-law.

Q Yes?

A The by-law was for $15 million, incidentally.

Q Neither the by-law nor the Order-in-Council refers specifically to the Main Bontal Bank loan?

A No, it's just a general by-law authorizing the Corporation to borrow $15 million from any place it wishes.

Q Yes, okay.

THE COMMISSIONER: General guarantee, authorization?

A General guarantee of the loan.

I have a copy here of the debenture issued by the Alberta Housing and Urban Renewal Corporation debenture number 3 in the amount of 8,140,000 Deutschmarks as at September 15th, 1969, the equivalent to 2,200,000 Canadian dollars, and it's signed and dated the 15th day of September, 1969 by the Chairman of the Board, the Executive Director and the guarantee is signed by F. G. Stewart, Deputy Provincial Treasurer.

Q All right.

A I have a copy of the certificate from the Deputy Provincial Secretary certifying that Gordon Elliott of Edmonton as a notary public in the Province of Alberta.

Q Just a notarial certificate?

A That's right.

I have another certificate that Austin Edward Bridges, from Austin Edward Bridges who was acting as Deputy Provincial Secretary at the time, to certify that Gordon Elliott was a notary public in the Province of Alberta. That was dated September the 26th.

I have a copy of a letter on Alberta Housing Corporation letterhead dated September 26th, 1969, to the Main Bontal Bank in Frankfurt West Germany, outlining the conditions of the loan, and there is places on this letter to have the guarantor sign the letter, the borrower and it's authorized by Gordon Elliott, Notary Public.

Q Is there any indication on your file, such as a covering letter as to how you received that or whether or not you signed it and sent it out and when I say you I mean your Department?

A No, I have no letters on that.

Q All right.

THE COMMISSIONER: To whom was that addressed?

A To the Main Bontal Bank in Frankfurt main, West German.

Q MR. McLENNAN: Mr. Currie, that would have reached your file when, do you know?

A When we accumulated the file, I think it was probably when the new government came in, I can't remember it being in our hands prior to that.

Q All right. That would have been sometime in 1971?

A Sometime in '71, somewhere in there.

Q And what else is on the file?

A This is from the Hessischelande Bank in Germany to the Alberta Housing --

THE COMMISSIONER: What is that?

A This is the German name of course, H-e-s-s-i-s-c-h-e-l-a-n-d-e-s b-a-n-k-g-i-r-o-z-e-n-t-r-a-l-e.

THE COMMISSIONER: Pronounced Smith.

Q MR. McLENNAN: Well, it's a German letterhead of course.

THE COMMISSIONER: I suppose I'll get that in some report.

MR. McLENNAN: It's called the Bank of Hessian, I

MR. McLENNAN: (continued) think in English, sir.

Q MR. McLENNAN: Mr. Currie, that refers to an assignment of the loan and notice to the lender and the guarantor?

A That's right, it was dated September the 16th of 1969.

Q All right.

A With a note at the bottom, would you kindly forward the enclosed letter to the Deputy Provincial Treasurer, that's how we would have it on our file.

Q Now, the rest of your file is material gathered again since or in 1971?

A That's right.

Q Now, is that at all unusual, Mr. Currie, that you wouldn't have any covering letters forwarding you the debenture for the guarantee or you returning it by a covering letter?

A It seems rather unusual, generally speaking there was a memo of some sort would come down with any documents that we had to sign and also would be sent back if there was one sent down originally.

Q And have you been able to determine the effective interest rate?

A Yes, we have had it checked out and the effective interest rate is, at the date of the option when the original loan was made, the effective interest rate was 10.81 per cent.

Q That is assuming no variation in the value of the mark or the Canadian dollar it would have been 10.81 per cent?

A That is correct.

THE COMMISSIONER: That is the mark at a value of what?

A It was around, just over 27 cents at that time.

Q MR. McLENNAN: All right, and have you also calculated, having regard for the present value of the mark, what the effective interest rate is in 1974?

A Not at 1974, we have a letter from an investment company, if no further changes occurred, this is dated October the 5th of 1973 when we are making inquiries into the loan, if no further change occurs in currency rates before the final redemption at maturity, the issue cost to borrower would be 14.94 per cent, that was at October the 5th, 1973.

Q All right.

A And at that time the Deutschmark was 41½ cents.

Q Okay.

THE COMMISSIONER: What was that rate?

A The Deutschmark value at October of 1973 was 41½ cents.

THE COMMISSIONER: But if there is no change made in that it would cost how much, the rate?

A The rate would be 14.94 per cent.

Q And if this loan of two million two hundred thousand, which netted two million and two thousand -

THE COMMISSIONER: He has not told us that yet.

MR. McLENNAN: I think Mr. Emmelkamp has already given that evidence, sir, that the discount was 9 percent, which was $198,000.

Q MR. McLENNAN: If it were repaid now, Mr. Currie, how many Canadian dollars would it take to repay it?

A The Deutschmark on Friday was just over 40 cents and it would take three million two hundred and seventy-five thousand five hundred and thirty-six dollars to repay it.

THE COMMISSIONER: That's on the 17th, is it?

A On the 17th of May.

THE COMMISSIONER: This is not repayable by installments, I understand.

A No, it is repayable at the end of maturity after the 15 year period.

THE COMMISSIONER: We have no idea now naturally what the value will be of the Deutschmark.

A No, we would not have.

THE COMMISSIONER: Is there any rate to repay?

A I've not seen one on any of the documentation that I have seen.

THE COMMISSIONER: That's about one million dollars over what was received.

MR. McLENNAN: A million and a quarter.

THE COMMISSIONER: I don't worry about a quarter.

MR. McLENNAN: Quarter of a million.

Q MR. McLENNAN: Mr. Currie, in the summer of 1969 was your department familiar with going interest rates on government guaranteed borrowings?

A Yes, we were because we have been operating the Alberta Municipal Financing Corporation since 1959 on borrowings from the open market, and we were in the market at least twice a year from then on.

Q And if the Provincial Treasurer determined that there was to be a borrowing or an inquiry as to a borrowing, what procedure was followed by your department?

A We had appointed fiscal agents for the Corporation, and these fiscal agents kept us informed as to what interest rates were in Canada, United States and Germany; and that when the Corporation determined it required money to meet demands on loans from the Corporation by municipalities, they would approach their agents and say, "Well, what's the market like now? What would our borrowing rate be in Canada; what would it be in the United States?" And in 1969 of course the German mark had been fairly attractive and we had made inquiries about Germany as well.

Q Mr. Stewart in fact had been to Germany that summer, had he not?

A He flew to Germany at the end of July in 1969.

Q Who were your fiscal agents?

A Wood Gundy from Toronto and MacLeod, Young and Weir. It was a joint custody of our fiscal agency.

Q They are two well known Canadian brokerage houses?

A Yes, they are.

Q If anyone from the Alberta Housing Corporation or any other part of the government made inquiries of your office, would you have been able to tell them readily in 1969 as to what interest rates they ought to expect on borrowings?

A Yes, we certainly could have. We were looking at the market continuously.

Q And is that an inquiry that would probably come to your attention if one had been made?

A Most likely to Mr. Stewart.

Q Do you know if any such inquiry was made by the Alberta Housing Corporation?

A Not to my knowledge.

THE COMMISSIONER: You are talking about borrowing from these individuals. Do you consider bank borrowing part of the -

A No, because bank borrowing is generally short term and of course we are in the long term market.

THE COMMISSIONER: This company borrowed five million dollars from the bank in 1970.

A Yes, they did run short term borrowing.

THE COMMISSIONER: It was a short term borrowing?

A Short term.

THE COMMISSIONER: You did not give any particulars about that.

Q MR. McLENNAN: Mr. Currie, what can you advise the inquiry about the interest rates you would have expected to be paid on a provincial guaranteed borrowing in July, August or September of 1969?

A I have two examples: the Alberta Government Telephones Commission wished to borrow in August of 1969 and negotiated a debenture issue. It was an 8 percent issue to be dated September the 15th, 1969. The individual who bought the debenture had the right to retract the debenture in September the 15th of 1974 or to extend it to September the 15th of 1989. Of the 15 million dollar issue, the proceeds to the Alberta Government Telephones was 98.10. The cost to the Telephones for the five-year short term life of the debenture was 8.47, and if the bondholder wished to extend it to 20 years, the cost to the Alberta Government Telephones would be 8.20.

On September 22nd of 1969 the Alberta Municipal Financing Corporation put out a debenture issue, 8 percent debentures, dated November 1st of 1969, again with the option to extend to November 1st of 1989. The par value at issue was 15 million, the proceeds to the Corporation was 97.35. The cost to the Corporation if the bonds were held for the short period was 8.66, and if held to the longer period of 20 years it would be 8.27.

Q Is there any reason to suppose, Mr. Currie, that the Alberta Housing Corporation would have paid more than the Municipal Financing Corporation or Alberta Government Telephones for a borrowing?

A I don't think it would have made that much difference. The provincial guarantee is the main thing on any of these debentures. If the Provincial guarantee is there, you more or less get the same rate.

Q Can you remember, Mr. Currie, what Mr. Stewart's reaction was when this borrowing came to his attention for his guarantee?

A Mr. Stewart, the first indication he had that the loan had been made was when the debenture arrived in his desk to be signed as the guarantor of the debenture, and Mr. Stewart was quite disturbed about the loan because, after having visited Germany himself, he felt it was quite a steep interest rate to be paid for the loan.

Q Mr. Stewart will tell us that. Do you recall his reaction when you discussed it with him?

A He was quite unhappy about it when he discussed it with me. He called me and talked it over with me and stated that he was very unhappy about this kind of thing.

THE COMMISSIONER: Why did you sign at that time? Could you not have backed out?

A The letter of intent which had been signed by Mr. Orysiuk in August was binding as far as we were concerned.

MR. McLENNAN: Mr. Stewart will give that evidence, sir.

THE COMMISSIONER: By that time you knew you could have borrowed at the rates these other corporations had borrowed at.

A When we have our debenture issues, that is the Alberta Municipal Financing Corporation, generally speaking when we determine that we are going to go, certainly the Provincial Treasurer would have been notified that we were intending to go. But we only phone Wood Gundy or one of the firms we were dealing with and tell them, yes, we are prepared to go ahead, and eventually we

get a letter for us to sign to say that we are going to do it. But in the meantime the bonds are sold in the market because these things have to be done in haste because really the markets are there at a given time and a given price, so to that degree it is binding on you once you have given an intention of doing something to go through with it.

THE COMMISSIONER: Did you ever give a Letter of Intent without the authorization of the Corporation?

A No, definitely not.

THE COMMISSIONER: An authorization given by the Board of Directors perhaps?

A The Board of Directors would come at a meeting, say, "Yes, we have to get money and give the general manager the right to go ahead and negotiate a loan at the best possible rate."

THE COMMISSIONER: Have you inquired as to whether it was done in this instance?

A No, I have not, sir, because looking at the minutes all I see is an indication that the loan had been made.

THE COMMISSIONER: That was after the fact.

A That was after the fact.

THE COMMISSIONER: That was an acknowledgment.

A Right, sir.

Q MR. McLENNAN: Mr. Currie, can you recall in your earlier discussions with me your description of Mr. Stewart's reaction when he saw the terms of this loan, that he was aghast?

A He was aghast in actual fact.

THE COMMISSIONER: He was more aghast when he had to sign

the cheque for the payout.

MR. McLENNAN: Would you answer my friends.

MR. STEER EXAMINES THE WITNESS:

Q Mr. Currie, you told us about the loans that were being made in 1969 by the Alberta Government Telephones and by the Alberta Municipal Financing Corporation, each in the amount of 15 million dollars?

A That's correct.

Q The amount of this loan was about one-seventh of that?

A It was two million two.

THE COMMISSIONER: Excuse me, Mr. Steer. What was the two for?

A It is just converting Deutschmarks to Canadian dollars. The actual loan was paid on that.

THE COMMISSIONER: It wasn't the piece the boys took, the 9 percent discount?

A No, I don't think so. I think it's just the number of Deutschmarks that were converted to Canadian. It could have been any Canadian figure.

THE COMMISSIONER: It's an odd figure to borrow, that's all. I can imagine them borrowing two million. Why two million two? It wasn't a $1.49 Day Sale, was it?

A No. We have taken a look at the German market at different times, and they will say, "You can have one million Deutschmarks, whatever it converts to in Canadian dollars." It is the Canadian equivalent. So it depends on what the Deutschmark is at a given date.

Q MR. STEER: At any rate we have a loan that's about one-seventh of the amount of either one of the two you have been talking about?

A That's correct.

Q Is it not correct that underwriting cost with regard to a loan are pretty constant notwithstanding the amount of the loan?

A The cost would be the same regardless of what the amount of money was.

Q Is it not correct that for small amounts of money like this - if it is at all relevant of course - small amounts of money as compared to what you were talking about, the interest rate becomes higher?

A No, I would not say that. I think if it was in the Canadian market the interest rate would be set, whatever the going rate was in the market, because the individual buying the bond is the one who is going to get the yield on it. It can be done either by reducing the amount of the actual value of the bond by discounting it. But I think that in the case of the two million issue the commission to the firms putting the debentures out would be probably higher than our commission where we have a 15 million issue, which is only one percent.

Q Now did you know that Mr. Emmelkamp had gone down to Montreal with Mr. Orysiuk about this loan?

A I was not aware of it at all.

Q And when he calculated the rate of return down there the interest rate, effective interest rate, he came to the conclusion that

the corporation had been borrowing mortgage money at something over 10 percent, so this rate wasn't too bad; did you know that?

A No, I wasn't aware of that.

Q Mr. Stewart had gone to Germany just shortly before this to look into the - what did he go there for?

A In 1969 the markets in both Canada and the United States were rather restricted, and before normally we had been borrowing 25 million dollars and now we were only able to borrow 15 million. As a result the German market had an interest rate that was indicated at seven and a half percent coupon, and the Corporation wanted Mr. Stewart to inquire as to whether a loan could be made in Germany and what the rate would be in comparison to Canadian or U.S. rates.

Q And did he come back with a favourable report?

A No. He came back with a derogative report at a meeting we had at the Corporation in September when we considered this 15 million dollar loan.

THE COMMISSIONER: What corporation are you talking about?

A Alberta Municipal Financing Corporation. He told the Board of Directors that the German rate at that time was indicated at 8 percent, but with the revaluation, impending revaluation of the German Deutschmark, that it would be more costly than that and that we should stay in Canada rather than going to Germany.

Q The fact of the matter is that money was tight in Canada at this time?

A Well, yes, if you can call 15 million dollars tight. Certainly it was more hard to get than it had been. As a result we had

to have retractable issues rather than straight long term debentures.

Q Now Alberta Housing Corporation was under the Department of Municipal Affairs?

A That's correct.

Q And am I right in assuming there was no lines of communication set up between that company and your department relative to the decisions the Corporation, the Alberta Housing Corporation, made with respect to borrowing money?

A Well, Mr. Stewart was a director of the Alberta Housing Corporation and as such the reason for his being on the Corporation was to keep in close touch with the operation of the Corporation.

Q Then Mr. Stewart would have been familiar with the fact that the Corporation was making a loan in Germany before he saw the debenture?

A No, he was not. That's why he was aghast when he saw the actual debenture come down for his signature.

Q He had not then been at the meeting of September 4th?

A No, he had not.

Q Do you know how long before September 4th it was that Mr. Stewart had attended a meeting?

A No, I haven't got that information.

Q At the time Mr. Stewart signed the debenture - I beg your pardon, he did not sign the debenture, he signed the guarantee - at that time there was an Order-In-Council in existence authorizing borrowing by Alberta Housing Corporation either in Canada

or abroad, including Germany; that is correct?

A I think the Order-In-Council indicated, it authorized the guarantee of the by-law of the loaning of money, and I think the by-law itself indicated it could be borrowed anywhere in the world. There are no restrictions as far as borrowing is concerned.

Q And that Order-In-Council, the request for it was prepared on September 5th; am I correct in that?

A I don't know because it was not prepared in our office.

Q It was not prepared in your office?

A No. All I have is the date of the actual Order-In-Council.

Q Which is September 9th?

A September 9th.

Q There would have to be a report prior to that?

A There would have to be a recommendation for an Order-In-Council prior to that.

Q The recommendation for the Order-In-Council did not come through the Provincial Treasurer's Department?

A Not to my knowledge.

Q Notwithstanding the fact that Mr. Stewart, the Deputy Minister, was supposed to be the financial liaison with the Alberta Housing Corporation?

A Not to my knowledge.

Q Mr. Stewart had the debenture in front of him as well as the guarantee at the time he signed it?

A Presumably he would. He would have had a copy of the Order-In-Council which came down to our office.

Q You were present, you told us, when Mr. Stewart signed a guarantee?

A I did not say that. I said Mr. Stewart told me he had signed the guarantee.

Q You were not present?

A I was not present when he signed it, no.

Q I got a false impression, I'm sorry. So the position then is - could I ask you this: do you know whether at the time Mr. Stewart signed the guarantee the debenture had been delivered to the borrower or was it still in the complete control of the Provincial Government, if I can use that term?

A No. He would have to sign the original debenture, so therefore it would be in the hands of the government.

Q And so far as you know Mr. Stewart did not take any steps to try and hold this matter up or renegotiate it or advise anyone else, other than you, that he thought the deal was not satisfactory; am I correct in that?

A Well, Mr. Stewart discussed the debenture with me, mentioned at least the loan, and I'm not aware that he did talk to anyone else.

Q He did one single thing more than that; is that correct?

A I was not aware when it happened, so I wouldn't know whether he phoned the minister or someone else. I wasn't there.

THE COMMISSIONER: It was given quite clearly that when there is a commitment by one of the corporations they felt they were bound. Whether they were or not I don't know. I'm not speaking as a member of the Court, now.

MR. STEER: My Lord, all I was trying to find out was whether any steps were taken at that time if the problem existed to try and get it corrected.

THE COMMISSIONER: I was wondering that's why I asked the question as to why they put this through and his answer to me was that they felt they were bound as soon as this commitment was made.

Q MR. STEER: You said, sir, you had a letter from the Hessian Bank Hessian Land Bank I think you called it, did you not?

A That's right.

Q The letter you mentioned of December 26 - I beg your pardon, September 26. Now, this letter which appears on your file, it says, guarantor Province of Alberta and there is, appears to be a signature there. Do you know whose signature would appear there?

A No, I have no idea, sir.

THE COMMISSIONER: Where is that, Mr. Steer?

MR. STEER: This is the letter which shows a number of points going down to twelve and then on the left-hand side it is to be signed borrower and then the Alberta Housing and Renewal Corporation on the left-hand side, guarantor, Province of Alberta.

THE COMMISSIONER: That is Exhibit 15 isn't it?

MR. STEER: This hasn't been an exhibit, sir. This isn't in exhibit, sir, I was just trying to find out who signed this document on behalf of the Province.

THE COMMISSIONER: If we're going to refer to this document maybe it would be nice if I could see it.

MR. STEER: Yes, sir, do you wish to mark it?

THE COMMISSIONER: I thought this letter was signed in Montreal.

MR. McLENNAN: No, Mr. Steer is now referring to a subsequent document entitled --

A This is the letter from Alberta Housing Corporation.

Q MR. McLENNAN: An agreement as to the terms of the loan, that is September the 26th, isn't it, Mr. Currie?

A Yes, that's right.

THE COMMISSIONER: His answer was he didn't know --

A I don't know who signed it. This is one of the documents that we eventually got when we developed the full file.

THE COMMISSIONER: Are there no initials on the documents when they write letters?

A I would think this was taken from the Housing Corporation file.

THE COMMISSIONER: Then they put initials on their letters identifying the letters?

A There's nothing to indicate on here who it was that had the letter made up.

THE COMMISSIONER: Maybe a stenographer.

2-FWB-3
J.M.C. Currie - Examined by Mr. Steer
- Examined by Mr. Bodner

Q MR. STEER: Just one final subject, Mr. Currie, am I to understand right that there was not a file in the Provincial Treasurer's office relevant to this loan until the government changed whenever that was, 1971?

A To my knowledge that is the case.

Q That is the case?

A Yes, it was collected afterwards.

Q So that as far as the documents are concerned then, there was nothing in the Provincial Treasurer's office whether anything was said orally about the matter to Mr. Stewart, you don't know?

A That's correct.

MR. STEER: Thank you, sir.

THE COMMISSIONER: Anything on that, Mr. Redmond?

MR. REDMOND: No thank you, sir.

MR. BODNER: I just have one question.

THE COMMISSIONER: Yes, all right.

MR. BODNER EXAMINES THE WITNESS:

Q Mr. Currie to your knowledge does Mr. Stewart receive minutes of the meetings of these different corporations which he is a member of?

A Yes, he does.

Q When would he formally receive these copies of the --

A I don't know how soon after a meeting he would receive them but he would receive them.

Q Would he receive them in a relatively short period of time?

A I'm afraid I cannot answer that.

THE COMMISSIONER: I'm sorry, Mr. Bodner, I had forgotten about you. Anybody else? Mr. Stevenson have you any -?

MR. STEVENSON: No, sir.

MR. McLENNAN: May the witness be excused, sir?

THE COMMISSIONER: Have you any further questions?

MR. McLENNAN: No, nothing.

THE COMMISSIONER: Thank you.

MR. McLENNAN: Thank you Mr. Currie. Would this be an appropriate time, sir, to adjourn? Mr. Achtem will be the next witness and he will be quite long, sir. We could take the break now and then just carry through until one o'clock.

(The Commission resumes at 11:10 a.m.)

MR. McLENNAN: Mr. Achtem.

EDWARD PETER ACHTEM, sworn, examined by Mr. McLennan:

Q Mr. Achtem, you are a member of the Law Society of the Province of Alberta?

A Yes, I am.

Q When did you graduate, sir?

A I graduated in 1963, the spring of 1963.

Q And you practised in Edmonton from that date until now?

A Yes, I did.

Q And you were associated with Lieber Koch and Achtem?

A Originally it was Lieber Romaine and Koch.

Q Lieber Romaine and Koch, in 1969 it was Lieber Koch and Achtem?

A Yes.

Q And what was the nature of that, your association with that firm?

A Under the name of Lieber Koch and Achtem we shared in office expenses and the trust account. I would pay a set amount of money per month towards office contributions for use of the secretarial service, the rental, it wasn't a partnership in the strict sense of the word.

Q That is you didn't share in Mr. Lieber's and Mr. Koch's income, and they didn't share in yours?

A No, we went our separate ways in that respect.

Q You shared office expenses only?

A Yes, sir.

Q All right, and can you tell the Inquiry as to when you first

Q (continued) did any work for Alberta Housing Corporation?

A This would go back to August 11th or 12th, approximately, of 1969. I was telephoned by Mr. Orysiuk at my office, Mr. Orysiuk advised me, in the course of our conversation, that perhaps the Corporation might be interested in using my service, and if so was I interested. I said yes I would be. I assumed this was for mortgage work at the time.

Q Up till that time, Mr. Achtem, had you done any work for Alberta Housing Corporation?

A No, I hadn't.

Q And were you acquainted with Mr. Orysiuk?

A I'd describe him at this point as a casual friend, I had met him, oh, I'd say, maybe 15 years before this.

THE COMMISSIONER: How many?

A I met him about 15 years before this, I used to work at my father's service station and he would come in there and buy gas and oil, and so I knew him on that basis, he'd come in. I subsequently got to know him after I graduated in law, I believe I acted for him on two motor vehicle cases, speeding cases I believe they were, and I subsequently did his will for him, but I would describe our relationship as casual friends in the sense that I knew him, he knew me, we saw each other, we'd say hello to each other, but we did not really associate with each other.

Q All right. And so it was. Had you ever discussed Alberta Housing Corporation work with him?

A No.

Q So it was more or less of a surprise when he called you and asked whether you'd be interested?

A Yes, it was.

Q And what transpired from then?

A Well, this was about August 11th or 12th, and in the course of the conversation he found out that I was going on holidays to Penticton in the next day or two, and I said I could come in and see you.

THE COMMISSIONER: You'll have to turn around a little bit, you can't hear in the court, I can't anyway.

MR. REDMOND: Perhaps, sir, the witness might also speak up so we can all hear.

THE COMMISSIONER: The witness is a member of the Bar, he knows how to speak in here, or should.

A Yes, sir.

In the course of our conversation on the telephone, this was August 11th or 12th, approximately, after finding out that I was going on holidays he asked me for how long a period. I said I would be gone with my family to Penticton for a period of approximately anywheres up to two weeks. He suggested that he would rather me come into his office to make an appointment and come into his office once I had returned from holidays. I arrived back in Edmonton with my family, this would approximately August 22nd or 23rd, 1969. I phoned Mr. Orysiuk at his office to make an appointment as he had asked, I believe I was to come into his office that afternoon, this would be August 22nd or 23rd, '69.

A (continued) I came to the Alberta Housing office that afternoon, I was invited into his office, there I was introduced to Mr. Doug McColl who was with Mr. Orysiuk. We sat down, as I recollect, they invited me to have a coffee with them.

THE COMMISSIONER: Well, you don't have to tell us which chair you sat in.

A In any event, in the course of the conversation they queried me about my practise, what type of practise it was. I told them the bulk of my work was in conveyancing, mortgaging and I did a bit of divorce work and some corporation work. I recall at the time I was assuming they were going to query me about doing mortgage work. I recall advising them at the time about our arrangement with the law firm I was with, as I have just described, that we weren't partners in the strict sense of the word. I believe they went on to ask me a bit about my involvement in real estate dealings, I advised them that I had been active in the real estate field. At that time I was advised, I believe by Mr. Orysiuk, that the Corporation was considering undertaking a very secretive and confidential land acquisition and that this had never been done before, and if I would be interested in possibly assisting, and I indicated I would. Prior to this they, before they brought that up, they advised me anything they discussed with me was to be treated in the strictest of confidence. It wasn't to go out of the office. I said, fine, then they advised me of this secretive and confidential land acquisition which they were hoping to

A (continued) undertake.

In the course of the conversation they asked me to consider, they'd like me to consider what I would be willing to charge them for my services. The conversation more or less ended then and there. There was just a bit of, like a scuttlebutt, talking back and forth, they asked me to come back I believe it was the following day or the day thereafter. I came back to the Housing Corporation's office, this would again be about, I presume, the 24th or the 25th of August. Again I met with Mr. Orysiuk and Mr. McColl in Mr. Orysiuk's office.

One thing further from the first meeting, they had brought out that if they were, would decide to use my services, they had advised me that I would have to be, to be prepared to dedicate my full services to this, they said that this was, there was no precedent for something like this, this type of acquisition, and bearing that in mind when I did come back on the second meeting on August 24th or 25th I advised them that I would be prepared to charge legal fees per the law tariff for legal work done and I would, I advised them that commissions normally paid in an area such as this, as they had described it being out of the city, in close proximity to the city but out of the city, is anywhere from 7 per cent or higher. I said I would be prepared to charge real estate commissions on a 5 per cent basis providing I could have it over a five-year period.

I was concerned that I didn't know

A (continued) how long this would take, what effect it would have on my practise of law, my practise was just a moderate practise but again I felt it would have some bearing on my practise so I put it to the gentlemen on that basis. This was the second meeting.

I recall them taking out a map showing a block of land indicating the city and another block of land indicating the portion of land that they were interested in acquiring. This was in the southeast, outside of the city.

I believe at this time --

THE COMMISSIONER: Perhaps you better tell us why the five-year period was interesting to you, would it not be for income tax purposes?

A Well, sir, they indicated it was a large tract of land --

THE COMMISSIONER: You said it's going to take a long time to acquire and you wanted it over a five-year period. I don't follow that at all unless it was to save income tax which is quite proper, nothing wrong with that.

A That would have been one of the reasons, they indicated in the two conversations that they wanted me to be able to dedicate my full time to it.

THE COMMISSIONER: Not for five years.

A No, no, but they indicated they didn't know how long it would take. They indicated that, Ed, this could take, it might take a couple of weeks and the whole thing will blow apart, it might go for a month, it might go for six months, it might go up to a year, there was no precedent for it. That concerned me that

A (continued) certainly if I was out of my practise for a period of a year that would, could jeopardize my law practise, bearing in mind the type of partnership arrangement we had. I recall that I was requested, at either the August 25th, '69 meeting or shortly thereafter, to get two appraisals. I was advised to get an appraisal on the land from Mr. Joe Quatum from Quatum Real Estate here in Edmonton, and further to get another appraisal from a competent land appraiser of my choosing, provided it met with their approval first.

I wasn't able to get ahold of Mr. Quatum, I made numerous telephone calls over to his office, I'd always get a girl saying he's not in. I believe I left my name on a few occasions but in any event after numerous attempts to get ahold of Mr. Quatum I was unsuccessful and I advised both Mr. McColl and Mr. Orysiuk if this. They asked me who I had chosen as an appraiser, as an alternate appraiser, I suggested Mr. Bert Davis from Weber Brothers. I knew Mr. Davis and he is quite experienced in the appraisal field here in Edmonton and area. At this time I had no contract or anything but I asked them if I, with their permission if I could go out into the area and look at the land. I did go into the area, just to get a general idea, I talked to Mr. Bert Davis after I received their permission, Mr. Davis whom I met over in his office at Weber Brothers advised me that he was quite familiar with the area.

Now, on the first meeting with him or the second meeting with him, that is Mr. Davis indicated to

A (continued) me that what the land values were in this particular area, and also from my going out into the area with their permission, that is the Alberta Housing Corporation's permission, I talked to a few farmers. I knew Mr. Chester Malback, who was in the area, I even talked to him to get a feel of the area.

I subsequently got an appraisal report from Mr. Davis.

Q When did you get the appraisal report from Mr. Davis?

A I talked to him for some time prior to getting it but I in fact got the appraisal report, I believe it was September 4th, September 2nd or September 4th.

Q Is there --

A Of '69.

Q Is this a copy of the report from Mr. Davis?

A Yes.

MR. McLENNAN: Might that be marked, sir. Perhaps I could read it.

THE COMMISSIONER: What is that, Mr. Clerk?

THE CLERK: 36, sir.

APPRAISAL REPORT MARKED EXHIBIT 36.

MR. McLENNAN: It's dated September 4th, addressed to Mr. Edward Achtem, Lieber Koch and Achtem, quote: Dear Mr. Achtem, re letter of opinion of valuation range between properties located in the north half of Section 27-51-24 West of the 4th and property located in Section 3, 52-24 West of the 4th, after the cursory survey of this area which lies on the

MR. McLENNAN: (continued) southeast periphery of the City of Edmonton, would indicate a value range of between 800 and $1,000 per acre for property located in the proximity of the north half of Section 27, and between 1800 and $2200 per acre for property located in the proximity of Section 3.

This letter of opinion is not to be construed as a comprehensive appraisal nor is my attendance in court contingent upon this opinion of value. This opinion is based on knowledge of transactions that have been known to take place and are believed to be relevant in supporting the valuation.

Trusting the above information will be satisfactory to your needs, respectfully submitted, R.L. Davis. Unquote.

Q MR. McLENNAN: Mr. Achtem, when did you receive Exhibit number 2 which I am showing you?

A I received this the date of the letter, August 28th, 1969.

Q And under what circumstances did you receive it?

A Again I had made an appointment to be at the Alberta Housing's office on that date. Again I was in Mr. Orysiuk's office in the presence of both Mr. Orysiuk and Mr. McColl. I recall, we had been talking and I recall a secretary coming in with this letter in the course of our conversation, and Mr. Orysiuk signed it and it was presented to me there.

Q Is this some two or three days after you arrived at this agreement?

A No, until that time I didn't realize, I didn't know if I had

A (continued) the agreement or not, as far as I was concerned there was no agreement till they gave me written authority to act for them, they hadn't up to this time.

Q No, but don't I understand from you that you had a conversation earlier in August in which you discussed what your fee would be, and then you went out and had a look at these properties?

A With their permission, but they didn't say we are now retaining you, I just asked them if I could have their permission to go out and look at the properties, treating it as a confidential and secretive matter, but they hadn't at this point said, we are hiring you to go out and do it.

Q When did they say that?

A On August 28th, 1969.

Q When did you arrive at your agreement that you would receive 5 per cent of the amount you paid for the land you acquired?

A August 28th, 1969.

Q Well could you tell me, tell the Inquiry then what happened at that meeting of August 28th, 1969?

A Well, they presented me with that letter. Mr. Orysiuk signed it and presented it to me, I read the letter. I believe I advised them that I would, again I indicated to them the arrangement with the firm I was with and presumed they were dealing with me, and if this was the situation I would like the small draft contract drawn up between myself and the Corporation.

Q Yes, you observed that Exhibit 2 is addressed to the law firm, not to you?

A Yes.

Q So you again pointed out to them that you were not partners in that firm?

A Yes, sir.

Q And suggested that a contract be drawn up?

A Yes, sir.

Q And did you draw one up then?

A I drafted one up in my own handwriting that day and I asked if I could bring it back to them. I had left their office and I asked them if I could draft one up and bring it back to them, it seemed to be okay. I brought it back, they asked me to come back to the offices that night because I guess they were busy on other matters or what, in any event I had, presented them with a handwritten agreement, this is a typewritten agreement but the same words, and it was typed out at the Alberta Housing offices that night, August 28th, 1969.

THE COMMISSIONER: They worked nights, these people?

A Well, they asked me to meet with them there that night.

THE COMMISSIONER: They had a staff there to type that letter for you?

A This, as I recollect at the meeting they said they had to come back that night to take care of some things, they said that their wives were coming with them that night, they asked me, I might as well bring my wife along too. I said fine, and I believe we met at their offices about, I'd say, eight o'clock that evening and I believe this was typed out by, I believe it was Mrs. Orysiuk. I had a handwritten form done up; I guess they felt that they would, it should be typewritten.

Q And when you refer to this document you are referring to Exhibit 3?

A Yes.

Q Now, Mr. Achtem, at that time you stipulated that you would take this fee over five years. In your agreement, Exhibit 3, you stipulated that the fee would be paid over five years time.

A Yes.

Q That was not contained in Exhibit 2?

A I believe it was an oversight in the preparation of this letter because I in no uncertain terms told them that I was prepared to take it on at a 5 percent commission provided that I could have it over a five-year period, bearing in mind that I felt I would be jeopardizing my practice, there was no precedent for this, and we didn't know how long this was going to take.

Q Did you appreciate on August 28th or before that time that the fee that you might well earn would be in the hundreds of thousands of dollars?

A At the first meeting they told me this was something - how would I describe it - a unique undertaking that had never been undertaken before, there was no precedent they knew of in Canada, and they didn't know how long it was going to take. They said it might take a week and it's all blown apart if it becomes public knowledge; it could take a month, it could take six months, it might take a year, they didn't know; but they told me if they decided to use my services I would have to be prepared to dedicate my full time to it.

Q They told you that you could use agents if you wanted to use

agents?

A Providing I got their permission. I had not anticipated using any agents. When I went into the area on August 25th, 26th, I wanted to peruse the overall area. I could gather there was around three or four realtor companies involved with listings in that area. There was -

Q It should not be tough to buy anything with a listing on it already?

A No. The problem there, if you buy something from a realtor, other realtors find out and you get this word of mouth and moccasin telegram as you would describe it. Realtors, that's their livelihood, and they are very alert types of people, if they find out someone was buying a lot of land in there, they would step in quick and start counter-offering and it would be just a price war and it could, in my opinion, destroy the effect of this position.

Q Mr. Achtem, my question was: on or about August 28th did you appreciate you were talking about the potential commissions that you might earn of hundreds of thousands of dollars?

A I felt I could earn a lot of money, yes.

Q Hundreds of thousands?

A Possible.

Q And I take it that's why you wanted it spread over five years?

A Yes sir, that would be one of the reasons.

Q What other reasons are there?

A The other reason would be that it would be jeopardizing my law

practice if I was out working on the property for a period of a year. I didn't know how long it was going to be. I would not have much of a practice to come back to if I was out -

Q Oh, I see. If you lost your whole practice, this would give you income for five years?

A Yes, sir, or jeopardize my practice.

Q Wasn't it contemplated by Mr. Orysiuk on or before August the 28th that this whole transaction may be completed within two or three weeks, within that period of time you would acquire all that you were going to acquire?

A I don't think so. I don't think it was contemplated.

Q You heard him give that evidence?

A He might have said that. In two or three weeks you would know, I would feel one would know how the thing was going, but I couldn't see how one could accomplish it in two or three weeks. It's possible though. I am not denying it.

Q On August 28 in the evening you finally received your authority to get after it?

A Yes.

Q And when did you buy your first piece of land?

A It would have been August 29th 1969.

Q And by that time had you already talked to Weber Brothers?

A Mr. Davies?

Q Yes.

A Yes, I had.

Q Did you receive instructions in writing as to what prices you

were to pay to the various people from whom you were trying to acquire land?

A Mr. Davies had given me - at my first meeting with Mr. Davies he advised me he was familiar with the area and he had given me at that time values for lands orally, not by way of letter. The letter subsequently came in September 4th, so I knew values of the land at that time from my conversations with Mr. Davies. I subsequently turned over the valuation over to I believe it was Mr. McColl.

Q We have heard evidence from Mr. Emmelkamp as to the number of properties you were able to acquire - twelve different properties were acquired within two weeks of when you started?

THE COMMISSIONER: Are you sure it was not eleven?

A I thought it was eleven.

MR. McLENNAN: Yes, sir. One was acquired by Weber Brothers.

Q MR. McLENNAN: Eleven different properties were acquired within two weeks?

A Yes, sir.

Q For a very substantial amount of money? I don't know what the total is, Mr. Achtem, but a couple of million dollars?

THE COMMISSIONER: We have that total.

A I believe that's correct.

Q Now then, was there any discussion when you began this acquisition of land or when the original discussions took place between you and Mr. Orysiuk and, you say, Mr. McColl was in on all these discussions?

A Dealing with my commissions?

Q Yes.

A Every one, sir.

Q And at that time when the nature of your practice and your degree of expertise in the area of acquiring land was discussed, was there no reference made to the firm of Lieber Koch and Achtem?

A A very casual reference. There was no elaboration into either Mr. Lieber or Mr. Koch. I believe just a brief mention of Mr. Lieber at most.

Q Well, Mr. Lieber is a person very experienced in acquiring lands?

A I would say so.

Q Is it fair, Mr. Achtem, in the City of Edmonton there is probably nobody that I can think of more experienced than Mr. Lieber in acquiring lands and disposing of them?

A I would say he's very competent.

Q That fact was not discussed in your original discussions?

A No, sir.

Q You would have been aware of that fact?

A I can say if it was mentioned, it was just a very casual mention.

Q You would have been aware of Mr. Lieber's qualifications in that regard?

A I would point out that Mr. Lieber and myself always went our separate ways.

THE COMMISSIONER: That is not what he is asking you.

Why don't you answer what you are asked? He is asking whether Mr. Lieber was experienced at that time.

A Yes, sir.

Q MR. McLENNAN: And highly qualified?

A Yes, sir.

Q And did you point that out when qualifications of you or the firm were discussed?

A I did not.

Q Why?

A I advised Mr. McColl and Mr. Orysiuk of my arrangement with the firm. I felt I was dealing with them in my sole capacity.

Q You did not think it was relevant that Mr. Lieber was a highly experienced and qualified man, to your knowledge? You did not think it was relevant to draw his qualifications to the attention of either Mr. Orysiuk or Mr. McColl?

A No, they would query me more or less about my qualifications.

Q When did you first learn that Weber Brothers were also acquiring land for the corporation?

A I didn't know about it until after the matter was made public in the newspaper.

Q That's on October 17th?

A Yes, sir.

Q And you didn't know that Clements Parlee were involved at that time either?

A I don't believe so.

Q You didn't know another law firm was involved in acquiring land?

A It would be around October 17th that I found out, give or take

a day or two. In that time range that's when I would have found out. I believe I found out at the time it was made public. I knew that Weber was in the area sometime prior to this, but I didn't know for what purpose.

Q Did you know they were buying land?

A Before it was made public?

Q Yes.

A No, not really.

THE COMMISSIONER: What were Weber Brothers doing in the area?

A As I found out later they were working on an acquisition of land to the north of the property I was working on. I was working on a parcel to the south.

Q MR. McLENNAN: And did you devote your full time to this employment, Mr. Achtem, after August 28th?

A I would say I did. I would come into my office to sign mail or maybe return calls; but I was expecting calls there too. Maybe the farmers or solicitors would have to contact me, so that would be the most appropriate place to contact me. But to all intents and purposes I was not concerned about my practice at this time.

Q Well, in acquiring eleven properties in something like 14 days, I take it that that's a pretty admirable accomplishment requiring an awful lot of your time?

A I hustle, yes, sir.

Q Did you obtain any assistance during that period of time from anyone?

A I obtained assistance from my father-in-law, Mr. Tom McLean, on

one parcel of land once I obtained permission from Mr. McColl and Mr. Orysiuk. It was a parcel of land listed by Hooson Realty and owned by Mr. Gus DeSmet. This parcel of land was in a fairly strategic area in the block of land I was working on. I was very concerned about realtors and speculators. The secrecy and confidentiality of it was of utmost importance. I had my father-in-law contact Hooson Realty after I obtained permission of the Corporation, and an offer was made. I believe Hooson Realty thought he was buying for the purpose of retiring out on the property. It was, I think, either a 20 or a 40-acre parcel of land more or less.

Q You mean you had Mr. Tom McLean go and make the offer to the realtor?

A Yes, in my presence.

Q And what was it listed for?

A I believe it was bought for approximately the listing price. I cannot recollect. Perhaps you might have a copy of the listing?

Q No, I'm sorry. In any event it was acquired for the listing price?

A That or perhaps even less than the listing price.

Q The realtor in that case was Hooson?

A Yes. George Stallybras. He runs Hooson Realty.

Q Did you obtain assistance from anyone else during that two-week period when you acquired these eleven properties?

A Yes.

Q Who else?

A I object to answer that question upon the ground that my answer may tend to incriminate me or to establish liability to a civil proceeding at the instance of the Crown or any person or to prosecution under any Act of Alberta.

THE COMMISSIONER: You know the corollary to that, too - it does not apply to perjury.

A Yes, sir.

THE COMMISSIONER: I warn you to be careful .

A Yes, sir.

Q MR. McLENNAN: I'm talking about the two-week period, Mr. Achtem, after August 28.

A Yes.

Q Within the two-week period after August 28th, did you obtain the assistance of anyone in acquiring the eleven properties that you acquired within that two-week period?

A I object to answer that question on the grounds I previously mentioned. I did obtain assistance, general assistance from Mr. Orysiuk.

Q What kind of assistance did you obtain?

A I object to answer that question on the grounds previously mentioned. As I indicated there were realtors in the area, there was great concern for speculators, the only ones that knew about this was Mr. Orysiuk, Mr. McColl and myself as far as I knew. I never actually asked for his assistance. He was always there when I wanted him. This acquisition was done in the harvesting time of the year. It meant my dealing with the farmers or the solicitors, quite often either early in the

morning or usually later in the night or after business hours.

Q Did you obtain assistance of anyone aside from Mr. Orysiuk during that two-week period, other than Mr. McLean as you mentioned?

A I object to answer that question on the grounds previously mentioned. I obtained some assistance from Mr. McColl.

Q What kind of assistance did you get from Mr. McColl?

A I object to answer that question on the grounds previously mentioned. Mr. McColl was a land appraiser. I could discuss prices with him and sometimes general questions came up.

Q For the same kind of thing you got assistance from Mr. Orysiuk on?

A I object to answer that question on the grounds previously mentioned. I obtained greater assistance in my opinion from Mr. Orysiuk, much greater assistance.

Q What greater assistance?

A I object to answer that question on the grounds previously mentioned. I found that I was moving fast on the properties. I found I was under great strain, emotional strain at the time. I wanted to do a good job. I was very concerned about the secrecy and the confidentiality blowing out, becoming public. Mr. Orysiuk was available at any time. I could discuss the matter with him. I felt great gratitude that if I had a problem I could go to him and just sit down and discuss it with him.

THE COMMISSIONER: He was the general manager of the housing authority. Naturally you would discuss it with him.

A I object to answer that question on the grounds previously mentioned.

THE COMMISSIONER: Don't answer it then.

A Yes, he was.

THE COMMISSIONER: I thought he was. He would be the natural person you would discuss any problems with in regard to purchasing this land.

A I object to answer that question on the grounds previously mentioned. Yes, sir, I felt that I could go to him at any time. And here I was going to him after hours. To give an instance -

THE COMMISSIONER: Was he not still the executive head of this authority after hours or before hours or at any other time?

A I object to answer the question on the grounds previously mentioned. Yes, he was, sir, but I could go over to his house, I could discuss it with him, this would be late at night or early in the morning.

THE COMMISSIONER: Did you ever discuss anything with him in his office except your remuneration?

A I object to answer that question on the grounds previously mentioned. Yes, I did, sir - discussion on the land, sir.

Q MR. McLENNAN: Mr. Achtem, the procedure you followed in connection with acquiring these lands was that you were given a certain authority to start with, certain dollar authority?

A I object to answer the question on the grounds previously mentioned. Yes, sir.

Q Who gave you the authority? Mr. McColl, didn't he?

A Would you rephrase the question?

Q Who gave you the authority "don't go above 1500 an acre on this parcel, don't go above 1800 an acre on this parcel, etc."?

A Mr. McColl was a land appraiser and I kept in close contact with him.

Q Did he give you that authority or didn't he?

A I knew the values. I studied the valuations. If I was in doubt about anything, I would go to him.

Q Who said, to start with, don't pay more than so much for a certain parcel?

A Mr. McColl.

Q You did not have a carte blanche to go out and buy whatever you thought was right, did you?

A If it was under the appraised value, sir, I did have the authority to buy.

Q All right, but most of it was above the appraised value, 90 percent was over the appraised value.

A I would suggest not.

Q What percentage was over the appraised value?

A This was a spot appraisal and I felt I purchased the lands within the appraised value. I feel to the contrary that I did not exceed valuations. If I did, it might have been just on a very few isolated cases.

Q Well, what were your instructions; who gave them to you?

A Both Mr. McColl and Mr. Orysiuk.

Q What were they; how much were you able to pay for land within

your own authority?

A We knew the properties at the bottom came in around $800, the valuations. The first property I picked up was around $600. That was under the appraised value. Then I worked my way up and naturally prices would increase as one goes up. And I felt, from talking with Mr. McColl and Mr. Orysiuk all along, no indication was given to me that I was really exceeding any values, appraised values. I was more or less coming in at appropriate values.

Q Who told you to go out and that whatever price you could get it for under appraised value to pay that? Someone must have told you that.

A Both Mr. Orysiuk and Mr. McColl.

Q When did they tell you that?

A Well, as of our meeting on August 28.

Q So as long as you were under 18 to 2200 an acre when you got to the north of the area, or under $800 an acre when you are south of your area, you felt free to go ahead and make the deal without checking with either McColl or Mr. Orysiuk?

A Before I consummated any deal I would contact either one of them to confirm what the price was.

Q If you had to go a couple of hundred higher you would also check with them?

A Yes.

Q Now those conversations were primarily with who?

A Primarily with Mr. McColl.

Q And if a cut-out was necessary, a home site was to be deleted

from the transaction, who was that conversation with?

A Either with Mr. McColl or Mr. Orysiuk.

Q But primarily with who?

A I would say it was more or less on an equal basis, whoever was available. If I phoned either to the Corporation and Mr. McColl was not available I would talk to Mr. Orysiuk, and if Mr. Orysiuk was not available I would talk to Mr. McColl. They were concerned about having no cut-outs if possible, and if there was to be a cut-out to make it as minimal as possible in order not to fragment the acquisition of the properties.

Q Did you call Mr. McColl in the evenings?

A I believe I might have called him a few times.

Q You were instructed, were you not, to call him at any time of the night or day, that urgency and time was the essence of this acquisition and you were to get a hold of him at any time?

A I believe I could have contacted him at any time, yes.

Q He instructed you to that effect, did he not?

A I know he said he would be available, to contact him if I wanted to.

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E.P. Achtem - Examined by Mr. McLennan

Q Now, at some point in time you made an agreement with Mr. Orysiuk whereby he would receive some of the compensation you earned?

A I object to answering that on the grounds previously mentioned; yes, sir.

Q When was that?

A I object to answering that on the grounds previously mentioned. The idea came to me, this would be approximately two weeks after I was into the acquisition. This would be in about the middle of September. I was having breakfast with my wife.

THE COMMISSIONER: I can't hear you.

A I am sorry, sir, I was having breakfast with my wife which would be about the middle of September and I had already been successful in acquiring the 11 parcels of land more or less which has been mentioned. I was so concerned with doing a good job and a complete job. At this point I was very concerned that the whole matter would blow wide open because there was activity in the area and people were starting to find this out. I advised my wife I felt great gratitude in not only getting the contract through Mr. Orysiuk but also on no request from me or anything he seemed to be - he was always available - I could discuss anything with him on the matter. I had nobody to go to. I felt competent as a realtor but again nothing like this had ever been undertaken before. I was under tranquilizers so that I could function better but I could discuss general things with Mr. Orysiuk, not just cutouts or reservation of buildings or farm, leasing rights in the future -

A (Cont.) I was concerned about the realtors there was four very competent realtors in the area and had they found out what was going on this whole thing could have blown wide open. Mr. P. Johnson he is with Check Realty he was one realtor who was very active in the area. His cards were at every farm I went to. I was concerned about who the solicitors were for the vendors. A lot of solicitors speculate and buy land. I was concerned if they found out. I could sit down and he was available at any time; even mention was made of him having his holiday at this time when he was working on his garage. I was at his house on numerous occasions when all this was happening. One specific instance that comes to my mind they made mention that a Mr. John McDonald was working on the garage I believe this was on a Saturday. I'd come over to see Mr. Orysiuk to discuss matters with him because I was working on the weekends also, Saturdays and Sundays and Mrs. Orysiuk offered us some coffee and pie.

THE COMMISSIONER: What kind of pie?

A Rhubarb pie, sir. So I did make mention I didn't like rhubarb pie and Mr. McDonald says, "You don't like rhubarb pie? I love rhubarb pie." So he eat my pie.

Q Can you eat rhubarb pie in September?

A I don't care for rhubarb pie, sir. But I would be over at his house even on that occasion when he was on his holiday I felt that I could sit down and discuss it with him. The most tantamount thing in my mind was that I would do a good job.

THE COMMISSIONER: That is after you picked up these 11 properties?

A Yes, sir, but I had had his assistance up to this time, sir. I felt he was doing more than was required of him in my mind.

THE COMMISSIONER: More than in the course of duty to the company?

A In my mind, yes.

THE COMMISSIONER: What is in his mind is the important thing.

A He was - I object to answering the question on the grounds previously mentioned.

THE COMMISSIONER: It was a comment.

A Pardon me, sir?

THE COMMISSIONER: It was a comment; it wasn't a question.

A Oh, I'm sorry; I felt his assistance was in a general, on a general basis very helpful to me; the tantamount thing being in my mind that I did a good job. I was expecting a good - blow up this thing around this point. Due to his what I call his assistance up to this point. I was successful in acquiring these properties. I was working my way up and to have a partial acquisition of land certainly woulnd't have been in the best interests of the corporation.

Q MR. McLENNAN: Well, Mr. Achtem, I think it is said that primarily you were dealing with Mr. McColl when it came to discussion of prices?

A Mr. McColl would be more competent as to prices I would say, yes.

Q He was the guy you primarily dealt with on that aspect of it?

A He was - yes, sir.

Q You dealt about the same with both of them as to cutouts?

A I had discussions with both of them, yes, sir, as to cutouts.

Q What was there then that Mr. Orysiuk did to assist you that made him the recipient of your benevolence.

A Sir, I could over to his house.

MR. REDMOND: Sir, I think the witness should be advised by counsel that on all these questions he should claim the protection individually, not leaving it to one objection. So I'm afraid I'll have to suggest to him that he use the time of the commission by adding that objection taken each time.

THE COMMISSIONER: We have all the summer.

A I object to answering the question on the grounds previously stated. I could get in contact with Mr. Orysiuk; I could discuss the file with him, one particular piece of property I might advise him that there was a certain realtor that had a listing on this property or there was a certain solicitor acting for the farmer on this property. I knew most of the lawyers in town and most of the realtors. I was concerned in keeping it secret, I felt that I could discuss it with him.

Q Well, let's just pause there for a minute. By this time you had dealt with Doug Matheson on the south side on how many sales you made?

A I object to answering the question on the grounds previously

A (Cont.) mentioned. Quite a few, sir.

Q Well, he knew something was up, eh? No doubt about that?

A I object to answering the question on the grounds previously stated. He was suspicious but at no time did I ever advise him.

Q I am not suggesting that you did advise him. I am saying that he knew that suddenly you were buying a whole bunch of land in the area in which he acted for something like 50% of the people you were buying from.

A I object to answering the question on the grounds previously stated, yes, sir.

Q So there was no doubt the cat was out of the bag insofar as the lawyer acting for 50% of the people knew?

A I object to answering the question on the grounds previously stated. In this situation Mr. Matheson was not a speculator. He is a gentleman of the first degree. He was concerned in fair dealings for his client. He didn't know - he might have been suspicious but he didn't know who I was acting for. My dealings with him were on a very amicable basis. I got the fullest co-operation from Mr. Matheson, sir.

Q Sure, but he knew what was going on is what I am saying. Not for whom it was going on but he knew what was going on?

A Yes, sir.

Q So it is clear that somebody a lawyer who acted for about 50% of the people in your area knew that there was a land assembly of some sort going on?

A Yes, sir.

Q Is that fair?

A Yes, sir.

Q Now, you were then discussing with Mr. Orysiuk that a lawyer should find out about it. Is there some particular lawyer you were worried about?

A I object to answering the question on the ground previously stated. There were a few lawyers I found out that were acting for other farmers in the area, who I consider speculators and if they had got wind of this deal, in my opinion it would have blown wide open.

Q What did Mr. Orysiuk do for you in that regard when you told him you knew there were lawyers involved that might blow the deal wide open because they were speculators. What assistance did Mr. Orysiuk give you?

A I object to answering the question on the grounds previously stated. I would describe as general assistance I could sit down I was under very considerable strain at this time very concerned about doing a good job. There was nobody I could discuss the matter with; a lot of my work was after hours and I felt that with his guidance and I felt I was competent, but still, with his guidance, I could do a very good job. That was the tantamount thing in my mind, to do a good job.

Q Well, you had already done a good job on 11 parcels.

A I object to answering that question on the grounds previously stated at that point it wasn't a good job, sir, for the corporation, it could have blown open at that stage and it was just a parcel of land away off where.

3-FWB-7
E.P. Achtem - Examined by Mr. McLennan

Q You had already done a good job with regard to those 11 parcels?

A Yes, sir.

Q Modesty should not prevent you saying, yes, to that that you agree with me.

A Yes, sir.

Q Well, I just ask you again, Mr. Achtem, are you saying that Mr. Orysiuk was a comfort to you, because as I understand your answers Mr. McColl was the man you primarily dealt with with regard to price. You dealt with him equally with regard to cutouts and subdivisions. What was it that Mr. Orysiuk did that was so special?

A I object to answering the questions on the grounds previously stated. I felt his services I looked on them as a general service. I could sit down and describe our tactics, how to go about approaching a person maybe leaving this person alone for a certain reason because there was a realtor involved or certain lawyer involved and going elsewhere. Just general discussion to discuss --

Q Strategy?

A Strategy, yes, sir, that would be a very good word.

Q And didn't you discuss strategy with Mr. McColl?

A I object to answering the question on the grounds previously stated. I did, on occasion.

THE COMMISSIONER: I didn't hear you.

A I did, sir, on occasion.

Q MR. McLENNAN: What was it then that was so special about Mr. Orysiuk?

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E.P. Achtem - Examined by Mr. McLennan

A I object to answering your questions on the grounds previously stated. In my mind his assistance was very special and --

Q But what was it?

A I could just discuss in general - again objecting to your questions on the grounds previously stated. I could discuss general strategy how I was going to move on certain properties.

THE COMMISSIONER: Well, let me ask you one question. I'm sorry, Mr. McLennan.

MR. McLENNAN: Fine, sir.

THE COMMISSIONER: Could you not have got in touch with him during the daytime you were always very anxious to make sure it was the morning or the night. Suppose you got in touch with him; could he not have held your hand at that time?

A I object to answering the questions on the grounds previously stated, sir. This was in the harvest time; most vendors were husband and wife.

THE COMMISSIONER: I'm just asking a hypothetical question. Could you not have seen him during the daytime to get the same comfort or advice with respect to strategy that you got in the evening?

A I wanted to be able to strike while the iron was hot. I had the husband and wife in the house at that time, at night after they were off the farm. I could sit down and discuss it with them then.

THE COMMISSIONER: You had the husband and wife in whose house?

A In their house.

THE COMMISSIONER: How could you discuss it with Orysiuk then?

A I would use the phone, sir; their phone, phone him.

THE COMMISSIONER: Now, will you answer my question which was to the effect could you not have discussed it generally, any of these problems in the daytime when Mr. Orysiuk was at the office, apart from having these people in the house at night?

A I object to answering your questions as previously stated. Some of the questions I could put off to the following day but again as I said, I wanted to strike while the iron was hot. I was concerned about other realtors in the area; they were starting to nose around; the farmers were talking. I was worried that any minute this thing would blow up and there would be no more acquisitions.

THE COMMISSIONER: What was so special about his advice when it was given you after 6:00 o'clock at night other than if it was given at 3:00 o'clock in the afternoon; what is the difference in his position?

A I object to answering your questions on the grounds previously stated, sir. I felt comfort being able to discuss it with him. There was strategy I could discuss with him, just the general strategy. Not only the cutouts, rights to refarm the property the previous year. There was nobody --

THE COMMISSIONER: But you were hired for something, weren't you?

A Yes, sir.

THE COMMISSIONER: You were hired because you were a man with the expertise to pick up these properties?

A Yes, sir.

Q And yet you go back to the person who hired you to ask his advice. Not on price, we're not on price, now. And you didn't because you say you wanted to discuss strategy with him.

A I object to answering that question on the grounds previously stated; yes, sir.

THE COMMISSIONER: All right, that's all I need to ask you.

Q MR. McLENNAN: Mr. Achtem, one of the first properties that you bought was from this fellow Johnson at Check Realty was it not; you made and offer on a piece of property on the 1st of September, 1969?

A I object to answering the question on the ground previously stated. What properties would those be, sir?

Q Preus?

A I object to answering the question on the ground previously stated. I believe you are speaking of Elmer Preus?

Q Yes, sir?

A I object to answering that question on the grounds previously stated, yes, sir.

Q Johnson was the real estate agent you were dealing with?

A I object to answering that question on the grounds previously stated. Yes, sir.

Q That must have been the third or fourth approach you made?

A I object to answering your question on the grounds previously stated. Yes, sir.

Q All right, well what deal did you make with Mr. Orysiuk?

A I object to answering your question on the ground previously stated. As I indicated earlier I, this one particular morning, right in the middle of September, I was having breakfast with my wife. I related the situation to my wife that I was not only grateful I had got the contract through Mr. Orysiuk but I felt that he was of great assistance to me in doing what I had done up to date in my mind. I told my wife, if it's possible I would like to be able to pay him half the real estate commission I would earn. My wife indicated to me she didn't think it could be done and I said, "I don't know myself." I said, "I know the solicitor I would like to go to for an opinion." If I could do it if it's possible to do it and with Mr. Orysiuk's approval - I hadn't seen him yet - if it was possible to do it, I would like to be able to do it for his assistance in helping me out. Nothing had been prearranged; this was the first time this had come to my mind when I discussed it with my wife.

Q What did you then do?

A I object to answering the question on the grounds previously mentioned. I believe that day or the following day I was in conversation with Mr. Orysiuk; I advised him; I said to him that I was - I felt grateful that he was making my work easier; that he was available whenever I wanted him. And I asked him to hear me out. I said, "Bob, I know a lawyer; I would like

A (Cont.) to be able to get his opinion. If it's possible I would like to be able to pay you half my commissions for the assistance I considered you have given me and did give me." His comment was, "I don't know if that is right." I said, I knew Mr. Jones; he was a competent lawyer, knowing money matters and having dealt with The Department of National Revenue. I said I would go to him for an opinion and if it was possible to pay him a commission, being concerned about any illegalities; if there was nothing wrong with it I would pay him. And he says, "Well, on that basis, fine. If you can't do it, not doing it." And that was mutually agreed to.

Q What was mutually agreed to?

A If there was anything wrong with it oh, excuse me - I object to answering your question on the grounds previously stated. If there was anything wrong with it any illegalities it wouldn't be done. I would have --.

Q Would have what?

A I object to answering your question on the ground previously stated. If there was anything wrong with it, naturally wouldn't have done it. I would have been better off financially. But I was getting what I consider as assistance and I was under a great strain and I felt I was getting valuable consideration from him, bearing in mind that my job was to do a good job in the acquisition.

Q What, did you then consult Mr. Jones?

A I object to answering your question on the ground previously stated. Yes, I did, I contacted him I believe this would be

A (Cont.) immediately after my discussion with Mr. Orysiuk. I believe I got hold of him the second or third week in September. All told I met with Mr. Jones three or four times at his office and either once or twice at his home.

THE COMMISSIONER: Didn't you tell him about the land you were acquiring?

A I object to answering the question on the ground previously stated. Yes, sir.

Q Were you not under instructions from the company itself outside of this man Orysiuk who you were dealing with personally, now, not to discuss this with anyone and you agreed to that. It was a matter you agreed to secrecy. And here you are dealing with Orysiuk personally now, and he is allowing you to disclose what you had been retained by the company to do.

A I object to answering that question on the ground previously stated. I went to a solicitor. I considered --

THE COMMISSIONER: You went to a solicitor and you were divulging the whole deal with A.H.C. buying this property which you had agreed not to divulge with the company. You had agreed with them not to divulge it. It was a secret matter you told him.

A I object to answering the question on the ground previously stated. Yes, sir, I don't believe I ever indicated to Mr. Jones where the property was, but -

THE COMMISSIONER: You just told me you told him about the deal.

A I did divulge to him that I was doing a confidential and secret

A (Cont.) land acquisition but not where it was specifically.

THE COMMISSIONER: Oh, go ahead; it is pretty hard to believe what you are talking about anyway.

Q MR. McLENNAN: Mr. Achtem you saw him three or four times at his office and a couple of times at his home?

A I object to answering the questions on the ground previously stated. Yes, sir.

Q Over what period of time?

A This would be perhaps from the second, third week in September into October, sir.

Q And what was the object of all these meetings?

A I object to answering your questions on the grounds previously stated. To get an opinion, a legal opinion.

Q Well, you don't need six meetings to get a legal opinion, do you?

A I object to answering the question on the grounds previously stated. He indicated to me that he would check the matter out for me and give me his opinion. I would phone him back periodically or he would phone me and I would go in and see him.

Q Well, in any event did you get an opinion from him?

A I object to answering your question on the grounds previously stated. Yes, sir.

Q What was it?

A I object to answering the question on the grounds previously stated. That it was okay to do this.

Q Do what?

A Pay him half the -- I object to answering the question on the grounds previously stated.

THE COMMISSIONER: The opinion I assume was written in the normal way; he wrote you an opinion?

A I object to answering the question on the ground previously stated. It wasn't a written opinion, sir.

THE COMMISSIONER: Didn't you want a written opinion? Here is a matter you were concerned about, Mr. Achtem.

A I object to answering the question on the grounds previously stated. I knew Mr. Frank Jones as a close friend for years, sir. And I took his word.

Q I'm not suggesting you didn't want to take his word. Didn't you want - did you not ask for a written opinion which might protect you in case the opinion were wrong?

A I object to answering the question on the ground previously stated. No, I did not.

Q MR. McLENNAN: Well, did you advise Mr. Jones that this person with whom you were going to share your commission was the executive director of the body that was paying you the commission?

A I object to answering the question on the ground previously stated. I showed him the contract, I believe it is Exhibit 3 here. I advised him that one of the individuals I was instrumental in getting the contract through was very helpful to me in my acquisition.

Q Did you tell him that the person with whom you were going to

Q (Cont.) share your commission was the executive director of the body that was paying your commission?

A I object to answering the question on the ground previously stated. I advised him it was Mr. Orysiuk, yes, sir, who was with the corporation.

Q And Mr. Jones advised you that there was nothing wrong with that?

A I object to answering the question on the ground previously stated. No, sir, he didn't. He advised me there was nothing wrong with it. After - after my meetings with him, my subsequent meetings with him he said he would get an opinion and let me know.

Q And were you satisfied thereafter, Mr. Achtem, there was nothing wrong with that?

A I object to answering the question on the grounds previously stated. Most definitely, yes, I was satisfied there was nothing wrong.

THE COMMISSIONER: Does Mr. Jones practice law?

A Yes, he does, sir.

THE COMMISSIONER: Still?

A Yes, sir.

THE COMMISSIONER: All right.

Q MR. McLENNAN: He is a tax expert, Mr. Achtem, is he not?

A I object to answering the question on the ground previously stated. Money matters and taxes, yes, sir; taxes, yes.

Q And you knew he was a tax expert?

A I object to answering the question on the ground previously stated. He had a reputation as being very competent in money matters and taxation, yes.

Q Well, did you see him because you knew he was a tax expert?

A I object to answering the question on the ground previously stated. I went to see him if there were in my mind any illegalities after this. If there were. I thought there was no illegalities because it was my contract. There was nothing prearranged. That I could deal with the contract as I felt right, but I wanted to get an opinion. I discussed it with my wife and if there were any illegalities in it I wouldn't have gone into it neither would have he.

THE COMMISSIONER: Did you hire him as your agent, is that what you are telling us here?

A I'm sorry, sir?

Q Did you hire him as your agent?

A Hire him?

THE COMMISSIONER: Mr. Orysiuk is the man we are talking about.

A I object to answering the question on the ground previously stated. Yes, sir.

THE COMMISSIONER: Did you file a T5 return with the income tax as to the monies you paid your agent?

A I object to answering the question on the grounds previously stated. Yes, sir, I did.

Q And you knew he was a tax expert?

A I object to answering the question on the ground previously stated. He had a reputation as being very competent in money matters and taxation, yes.

Q Well, did you see him because you knew he was a tax expert?

A I object to answering the question on the ground previously stated. I went to see him if there were in my mind any illegalities after this. If there were. I thought there was no illegalities because it was my contract. There was nothing prearranged. That I could deal with the contract as I felt right, but I wanted to get an opinion. I discussed it with my wife and if there were any illegalities in it I wouldn't have gone into it neither would have he.

THE COMMISSIONER: Did you hire him as your agent, is that what you are telling us here?

A I'm sorry, sir?

Q Did you hire him as your agent?

A Hire him?

THE COMMISSIONER: Mr. Orysiuk is the man we are talking about.

A I object to answering the question on the ground previously stated. Yes, sir.

THE COMMISSIONER: Did you file a T5 return with the income tax as to the monies you paid your agent?

A I object to answering the question on the grounds previously stated. Yes, sir, I did.

THE COMMISSIONER: Will you produce it?

A I object to answering the question on the grounds previously stated. Yes, sir.

Q MR. McLENNAN: You will do that, Mr. Achtem; produce it?

MR. REDMOND: What is it that you want?

MR. McLENNAN: The T5, the income tax return.

MR. REDMOND: You want the T5 or the income tax return?

MR. McLENNAN: The T5.

THE COMMISSIONER: I don't want his tax return. I want what he filed with respect to Orysiuk when he paid him as an agent.

MR. REDMOND: I think the reference, sir, was speaking of a tax return. I am not aware of any T5. I will undertake to try to find such a thing but I don't know.

THE COMMISSIONER: He says he filed it showing he paid wages to this man or at least that's what I gather he said.

MR. REDMOND: I think he said he had indicated in his income tax, sir, but I'm not sure he specifically said there was a T5 prepared. But I can --

THE COMMISSIONER: Well, I'll find that out but I don't know what he said.

A I object to answering the question on the ground previously stated. I declared my earnings which would have been half

A (Cont.) the commissions and I believe Mr. Orysiuk declared his half.

THE COMMISSIONER: We can't find his income tax returns; he has unfortunately destroyed them. You haven't destroyed yours?

A Mine would be with the department, sir.

THE COMMISSIONER: Did you file a T5 return showing you had an employee to whom you paid certain money?

MR. REDMOND: Take the objection.

A I object to answering the question on the ground previously stated.

THE COMMISSIONER: I'm not asking or looking for an income tax, don't worry about that. I'm just asking the question if you made this --

A Sir, I am not an accountant but I disclosed my earnings which were half the commissions.

THE COMMISSIONER: It is not a question of disclosure. I am asking if you filed a normal return that we're talking about, this T5?

A I object to answering the question on the ground stated previously. Yes, sir, I would have.

THE COMMISSIONER: He says he filed it; he will produce it.

MR. McLENNAN: I think the T5, My Lord, if my recollection is right, is an interest payment. The T4 --

THE COMMISSIONER: All right, T4 we know what we're talking about.

MR. McLENNAN: Right.

Q MR. McLENNAN: Mr. Achtem, when and did you get this confirmation from Mr. Jones that everything was all right?

A I object to answering the question on the grounds previously stated. This would have been approximately, should be in the month of October, approximately, I would say, three weeks after I first saw him.

Q So something like around the first week in October?

A The first or the second week. I object to answering the question on the ground previously stated. The first or second week of October, yes, sir.

Q And then did you go back to Mr. Orysiuk and say it was okay to make this arrangement?

A I object to answering the question on the ground previously stated. Yes, sir.

Q And how do you arrive at what --

THE COMMISSIONER: When was the deal made? You'd better find out. He talked about a deal two weeks after. Now he goes and takes advice and all that sort of thing. He hasn't made the deal yet. When was the deal made?

Q MR. McLENNAN: How did you arrive at an equal division of your commissions?

A I object to answering your questions on the ground previously stated. It was my idea.

Q How did you arrive at 50/50?

A I object to answering the question on the ground previously stated. My concern was doing a good complete job. And on the

A (Cont.) basis of what he was doing for me I figured, to me, to my mind, I felt I was prepared to pay him 50% of the commission.

Q Well, I'm just asking, Mr. Achtem, how did you arrive at 50 per cent, Mr. McColl was helping you in the same fashion on a number of the matters that Mr. Orysiuk was assisting on, was he not?

A I refuse to answer on the grounds as previously stated. Not, no he wasn't, not in that sense that I could go to Mr. Orysiuk at any time and, after hours, which I considered outside of his employment.

Q But you could go to Mr. McColl after hours, did you ever try?

A I didn't know Mr. McColl all that well, Mr. Orysiuk lived close to me, I could drive over to his house whenever I wanted to.

THE COMMISSIONER: You mean close to you geographically?

A Yes, sir.

Q MR. McLENNAN: Could you tell me, sir, how you arrived at 50 per cent? Did you think that was an accurate reflection of the service he was rendering?

A I refuse to answer the question on the grounds as previously stated, bearing in mind the job I was hired to do I felt it was.

Q And when did you arrive at this 50-50 deal?

A I object to answer the question on the grounds previously stated. As I earlier stated I had prediscussion with my wife in the middle of September I had gone to Mr. Orysiuk, I believe the day after or that day, after I related to him what I proposed to do, if there was no illegalities or nothing wrong with it, we were going to go into it. That would have been the

A (continued) date.

Q All right.

A In the middle of September.

Q So it was that date, subject to you checking it was two weeks after, approximately two weeks after August 28th that you made the deal, subject to you checking with a solicitor, which occurred three weeks or so later?

A I object to answer the question on the grounds previously stated, yes, sir.

THE COMMISSIONER: Well, was there a deal made at all or was this a gift because you were grateful?

A I object to answer the question on the grounds previously stated, sir, I indeed was grateful, sir.

THE COMMISSIONER: That's right.

A But I also considered he was a great help to me as I indicated, I was under tranquillizers, I still consider myself a very competent realtor, the most important thing in my mind, more so than these commissions, sir, was doing a good job.

THE COMMISSIONER: Well did he obligate himself then to work for you or was he just doing this on a friendly basis? I'm just finding out whether it's a gift or not, or you had a contract which compelled him to do something, you know what a contract is, at least I think you do.

A Yes, sir. I object to answer the question on the grounds previously stated, certainly it was not a gift.

THE COMMISSIONER: What was it?

A It was a contract, I object to answer the question on the

A (continued) grounds previously stated, it was a contract, sir.

THE COMMISSIONER: Binding on you?

A Yes, sir.

Q MR. McLENNAN: Mr. Achtem, you were satisfied after you talked to Frank Jones there was nothing wrong with this arrangement you made with Mr. Orysiuk?

A I object to answer the question on the grounds previously stated, in my mind if there were any illegalities with it I most definitely would not have gone into it, sir. I would have made a considerably larger amount of money and I wasn't just acting out of gratitude, gratitude was a factor but I considered his help in accomplishing this thing very important to me.

Q All right, so after, you didn't think there was anything wrong with it but you checked with Mr. Jones; he confirmed that there was nothing wrong with it and thereafter you were serene in the belief that there was nothing wrong with it?

A I object to answer the question on the grounds previously stated, yes, sir.

Q Did you ever tell anybody about this arrangement?

A I object to answer the question on the grounds previously stated, I mentioned it to, my wife knew about it, his wife knew about it, my father knew about it, Mr. Jones knew about it.

THE COMMISSIONER: Mr. McColl?

A I object to answer the question on the grounds previously stated, no, sir, he did not.

THE COMMISSIONER: The company?

A I object to answer the question on the grounds previously stated, sir, no.

Q MR. McLENNAN: Mr. Lieber?

A I object to answer the question on the grounds previously stated, no, sir.

Q Did Mr. Lieber not ask you on more than one occasion as to the nature of this retainer?

A Please elaborate, I'm sorry.

Q Well, did Mr. Lieber, after it became clear that you were, received this large retainer from Alberta Housing Corporation, did Mr. Lieber not question you as to whether or not that wasn't something that belonged to the firm as against to you individually?

A I object to answer the question on the grounds previously stated, he put words to that effect to me sometime after it was public.

Q Yes.

A Yes, yes, sir.

Q In late October or November or December, maybe January the following year?

A I object to answer the question on the grounds previously stated, yes, sir.

Q And you had several conversations with both he and Mr. Koch as to the fact that, no, this was your personal deal?

A I object to answer the question on the grounds previously stated, yes sir, I advised them it was my personal deal.

Q And were inquiries made by Mr. Lieber and Mr. Koch of yourself as to how much commission you were going to earn pursuant to this arrangement?

A I object to answer the question on the grounds previously stated, I don't believe they ever asked me how much I was earning or what earned.

Q Wasn't it discussed as to the amount of money you were earning?

A I object to answer the question on the grounds previously stated, to my best recollection I do not think so.

Q Well, did you tell either Mr. Lieber or Mr. Koch about your arrangement with Mr. Orysiuk?

A I object to answer the question on the grounds previously stated, our arrangement, that's the firm, we all went our separate ways, I saw very little of Mr. Lieber, I saw more of Mr. Koch but I had never discussed it with them; I further advised Mr. Lieber if he was not satisfied when he did ask me, I said I could show him a contract in my name, and he was, Mr. Lieber suggest, would indicate that our arrangement was such that we each went our separate ways as far as our practises went and business went.

Q Did you ever show Mr. Lieber Exhibit 2?

A I did not, sir, I object to answer the question on the grounds previously stated, I did not.

Q Well my question is this, Mr. Achtem, you and Mr. Lieber and Mr. Koch discussed generally the question of the substantial amount of money you were earning as a result of the work you were doing for Alberta Housing Corporation?

A At what date would this be, sir, about?

Q In the fall of 1969?

A After it was public?

Q Yes?

A I object to answer the question on the grounds previously stated, we had discussions, yes.

Q And did you ever tell them that you had a deal with Mr. Orysiuk whereby half of your commissions would be payable to Mr. Orysiuk?

A I object to answer the question on the grounds previously stated, no I did not.

Q Did you know the degree of head start, if I could put it that way, that you had over anybody else that was buying land for the Corporation?

A I'm sorry?

Q Did you know the degree of head start that you had over the other people that were buying land for the Corporation?

A I definitely did not.

Q Now, in Exhibit 2 you were advised that you were authorized to engage such other agents as you deemed necessary to effect the above-mentioned acquisitions?

A Yes, sir.

Q What you were advised was, that this authorization is conditional on obtaining my approval or that of Mr. D. McColl of this office, that is signed by Mr. Orysiuk?

A Yes, sir.

Q And did you get either of their approvals on the hiring of Mr.

Q (continued) Orysiuk?

A I object to answer the question on the grounds previously stated, I certainly didn't get Mr. McColl's.

Q I'm sorry, did you get either of their approval?

A I object to answer the question on the grounds previously stated, if you are referring to the date August 28th, '69, I hadn't even, the thought hadn't passed my mind whether to approach Mr. Orysiuk about this.

Q I'm not asking you that, sir, I am saying that you were authorized to hire an agent if you wanted one?

A I object to answer the question on the grounds previously stated, yes sir.

Q But you had to clear that with either Mr. Orysiuk or Mr. McColl?

A I object to answer the question on the grounds previously stated, yes sir.

Q Your evidence is you subsequently hired Mr. Orysiuk?

A I object to answer the question on the grounds previously stated, yes sir, I did.

Q Did you clear that with either Orysiuk or McColl?

A I object to answer the question on the grounds previously stated, I cleared it with Mr. Orysiuk then.

Q So Mr. Orysiuk approved your arrangement with the hiring of Mr. Orysiuk?

A I object to answering the question on the grounds previously stated, providing there were no illegalities in it, yes.

Q But surely, Mr. Achtem, wouldn't that demonstrate beyond

Q (continued) peradventure of a doubt to your mind that that was improper, that Mr. Orysiuk as the Executive Director of the Housing Corporation approved your hiring him as your sub-agent?

A I object to answer that on the grounds previously stated, sir, I felt this was my contract.

Q Well fine, why didn't you discuss it with Mr. McColl if it was all all right, he was the Assistant Executive Director, was he?

A Yes.

Q Why didn't you discuss it with him?

A I object to answer the question on the grounds previously stated, I just didn't discuss it with him, sir.

Q Why?

A I object to answer the question on the grounds as previously stated, I just didn't give it any thought to discuss it with him.

THE COMMISSIONER: Well, what Mr. McLennan is getting at is pretty simple, he is asking you, in other words did Mr. Orysiuk as an officer of the Corporation, give his approval to this deal?

A I object to answer the question on the grounds as previously stated, I did not feel I was approaching him as an officer of the Company, I felt that this was my contract.

THE COMMISSIONER: Well then you never got an approval of the Company at all?

A I object to answer the question on the grounds previously stated, I did not, sir.

Q MR. McLENNAN: All right, Mr. Achtem, I had mentioned to you the Preus offer, you signed an offer to purchase to Check Realty Limited on the 1st of September, 1969?

A Yes I did, sir.

Q And that was an offer to purchase to a Mr. Preus, right?

A Yes, sir, through Check Realty Limited with Mr. Johnson of Check Realty Limited.

Q And what is Mr. Johnson's first name, do you know?

A Peter.

Q Peter Johnson?

A Yes.

Q And you offered $59,500?

A Yes, sir.

Q And how did you arrive at that number?

A That was their listing sale price back on the date the offer was made, sir.

Q Yes, there was an offer, there was a listing whereby Preus had authorized Check Realty to sell his land for at least $59,500?

THE COMMISSIONER: How do you spell Check, is that C-h-e-c-k?

MR. McLENNAN: C-h-e-c-k, sir.

Q MR. McLENNAN: All right, what happened to that, Mr. Achtem?

A I believe Mr. Johnson, from my discussions with him, presented it to Mr. Preus as per the listing agreement, I had prior

A (continued) contact with Mr. Preus before I realized there was a listing agreement, and indicated my interest in possibly being interested in buying his land. For some reason or other Mr. Jones had advised me that the interim agreement that was taken to Mr. Preus wasn't signed because Mr. Preus would not sign it.

Q All right. Did you say yourself that there was in fact a signed listing between Preus and Check Realty?

A Yes sir, seemed to be.

Q And when Preus then refused to go along with the offer what did you do?

A I remember having brief discussions with Mr. Preus advising that, the possibility of wanting to get specific performance perhaps to enforce the contract.

Q There is no doubt about that if the contracts were both properly executed, is there?

A There is some doubt, there is conflicting doubts in town as to whether one can get specific performance on an interim agreement or not. I've talked to numerous lawyers about that, some lawyers have converse opinions.

THE COMMISSIONER: I don't know what you are talking about because I can't hear you.

A I'm sorry, sir.

Q MR. McLENNAN: Well, did you do anything about that transaction, Preus refused to go along with his listing agreement with Check?

A Yes sir, I tried my best to talk to him, convince him to sign

A (continued) it.

Q But he wouldn't?

A He's a very stubborn man. No he wouldn't.

Q And I presume that Check tried to get him to sign it, too, or Johnson?

A Peter Johnson, yes.

Q In any event he refused?

A Yes, sir.

Q And the question arose, I take it, as to whether or not you could force Mr. Preus to comply with his listing agreement?

A I'm sorry, was there a discussion with Mr. Johnson?

Q No, the question arose as to whether or not you could force Mr. Preus to comply with his listing agreement?

A Yes, sir.

Q Because if you could force him to comply with his listing agreement you could buy it at fifty-nine five because that's what it was listed at?

A Yes, sir.

Q Did you come to the conclusion you couldn't force him to do it?

A I felt that there was a possibility that I would be unsuccessful in getting specific performance, also Preus indicated that he was, there was misrepresentations made to him to get this listing agreement, not by me but by, I presume the realty company involved, and he felt he was taken, being taken, something to that effect.

Q Did you subsequently buy this land?

A Yes sir.

Q Do you remember how much you paid?

A This land was bought I think it was, I believe the last deal, I picked up so to speak, tying up the loose ends, in I believe it was January of '70.

Q Yes, 23rd of January 1970.

A Yes, sir.

Q For $1300 an acre?

A Correct.

Q Total price, $104,000?

A Yes, sir. I might point out that his brother's property is right across the road from this and his brother received more or less the same price per acre. That is another reason it got him all riled up.

Q Did you ever give a legal opinion as to whether or not the listing agreement was enforceable?

A I didn't give a written opinion, I checked around with other lawyers getting opinions and there were a lot of views that specific performance would certainly depend on the content of the listing agreement. A lot of listing agreements were found to be defective as far as being able to get specific performance. I felt there would be --

Q Did you look at this listing agreement?

A Yes I did, sir.

Q And it was in order?

A Seemed to be.

Q Well, did you give a legal opinion then to the Corporation as to whether or not you can enforce your offer with Preus?

A I felt there might be a difficulty in enforcing specific performance here, whether in fact you can get specific performance or not I questioned. Also that I may comment that Preus was saying that there was misrepresentations made to him thereby making the listing agreement of no effect.

Q Well, all I'm asking, Mr. Achtem, did you give that opinion to the Corporation?

A Yes I did, sir.

Q To whom?

A I believe both Mr. McColl and Mr. Orysiuk.

Q And did they instruct you to ignore it and go ahead and buy the land, aside from that listing agreement?

A Subsequently, yes.

Q And you subsequently bought it for $104,000?

A Yes, sir.

Q All right, now you earned a commission on that transaction?

A Yes I did, sir.

THE COMMISSIONER: Was that a written opinion, we are dealing with a hundred thousand dollars.

Q MR. McLENNAN: Was it, Mr. Achtem?

THE COMMISSIONER: To your own client?

A No it wasn't, sir.

Q Mr. McLennan: All right, now you earned a commission on that?

A Yes, sir.

Q Well now, can you explain this to me, Mr. Achtem, this is what I have trouble with. Why would they be paying you a commission

Q (continued) for buying a piece of land in January 1970, some three months after this whole transaction was made public? Everybody in the world, including Mr. Preus, knew that you had been buying land on behalf of Alberta Housing Corporation?

A Yes, sir.

Q And within the general perimeters of the area in which you were buying the land, correct?

A Yes, sir.

Q Well why would you be earning a 5 per cent commission then to buy a piece of land at the end of January, 1970?

A That was a loose end I was cleaning up, so to speak, sir, the property his brother had across the street, or across the road is more or less the same price and if they wanted the property that was the price they were going to have to pay for it, he was very difficult to deal with. I dealt with Mr. John Grotsky on that, he switched lawyers a few times even.

Q My point is that your original hiring had to do with the secret confidential nature of this?

A Yes, sir.

Q Well after the secret confidential nature of it had disappeared, why were you still buying at a 5 per cent commission, do you know?

A Well, at this time there was a large mass of land, maybe the farmer was concerned that he'd never be able to sell his land again.

Q Exactly, but why wouldn't the Corporation just send any one of a dozen employees over to buy it then, or ask Mr. Preus to

Q (continued) to come into their office and sell it. Why were you retained three months after it was made public to be buying land?

A Because I kept talking to Mr. Preus about it, to his lawyer Mr. Grotsky about it, he was a very awkward fellow to deal with. I felt in the end I could get the land.

Q All right. I take it then after this deal was made public you didn't go back to the Corporation and say, all right, I have got my law practise to return to, you can carry on with agents, you don't have to deal with lawyers any more, the secret nature of this is all gone, you didn't do that?

A I think my work was pretty well over around the end of January, into February, the latest of '70, as far as acquisitions went, yes, for the Corporation.

Q Well, that's three month's work isn't it, that's still three months after it was made public?

A Yes, sir.

Q All right. You can't tell me why you were still buying land after a secretive confidential idea had disappeared?

A I don't think there was anything wrong with it, I think this is quite --

Q I don't think there's anything wrong with it either, other than it may have been stupid on the part of Alberta Housing Corporation, but you don't know why you were still buying land after your identity was known and your principals identity was known?

A I felt I did a good job for them and they seemed to be very pleased.

Q I'm not questioning that, Mr. Achtem. In any event on that particular transaction Mr. Check, or Check Realty sued Mr. Preus for his commission?

A Yes, sir.

Q And that lawsuit, Alberta Housing Corporation was third partied in that litigation?

A Yes, sir.

Q And that litigation was eventually settled?

A Yes, sir.

Q And you contributed the whole of the settlement, did you?

A I believe if not the whole of the settlement, the largest portion of it, yes sir.

Q Yes, now can you tell me why you were to do that?

A I felt this was a government body and they certainly wanted to maintain a proper image showing fair dealings with the public and I offered to contribute.

Q That is out of your commissions?

A Yes, sir.

THE COMMISSIONER: Well, half out of his commission.

A Yes sir, I object to answer the question on the grounds as previously stated, yes sir.

THE COMMISSIONER: It wasn't the question. I just made a comment to Mr. McLennan.

Q MR. McLENNAN: Well, Mr. Achtem, why would you pay Preus' commission or any portion of it to the person with whom he listed his property?

A There's two very difficult personalities here, the realty company and Mr. Preus. They were at loggerheads. I felt this was the Alberta Housing Corporation and they wanted to maintain, they would want to maintain a clean proper image, I was concerned about resolving it.

Q Why?

A So everybody would be happy.

Q But it wasn't a dispute to which you were a party?

A No it wasn't.

Q Why did you want to get it resolved, what interest did you have in resolving some litigation to which you were not a party?

A I wanted to be a good guy so to speak.

THE COMMISSIONER: What is the second thing?

Q MR. McLENNAN: Any other reason, sir?

A Not really, sir.

THE COMMISSIONER: What was the amount of commission paid?

A I believe it was around $3500, sir, approximately.

Q MR. McLENNAN: All right, now you acquired a piece of property in Mill Creek?

THE COMMISSIONER: I think if you are starting on another piece of property we better adjourn.

MR. McLENNAN: Fine, sir.

(The Hearing adjourned.)

BUDGET & FISCAL DIVISION MAY 28 1974

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CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

IN THE MATTER OF THE PUBLIC INQUIRIES ACT AND THE ALBERTA HOUSING CORPORATION

The Honourable Mr. Justice J. M. Cairns — Commissioner.

R. A. McLennan, Esq., Q.C., — Commission Counsel.

G. A. C. Steer, Esq., Q.C., — For R. B. Orysiuk.

J. E. Redmond, Esq., Q.C., — For E. P. Achtem.

H. A. Bodner, Esq., Q.C., — For Alberta Housing Corporation.

E. D. Stack, Esq., Q.C., — For Gateway Building Supplies.

A. T. Murray, Esq., — For William Weir.

W. A. Stevenson, Esq., and A. H. Lefever, Esq., — For D. McColl.

DATE: May 22, 1974.

HELD AT: Edmonton, Alberta.

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I N D E X

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WITNESSES:

EDWARD PETER ACHTEM

Examination by The Commissioner 613
Examination by Mr. McLennan 619

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C A N A D A)
PROVINCE OF ALBERTA)
TO WIT:)

IN THE MATTER OF THE PUBLIC INQUIRIES ACT AND THE ALBERTA HOUSING CORPORATION

The Honourable Mr. Justice J. M. Cairns	Commissioner.
R. A. McLennan, Esq., Q.C.,	Commission Counsel.

G. A. C. Steer, Esq., Q.C.,	For R. B. Orysiuk.
J. E. Redmond, Esq., Q.C.,	For E. P. Achtem.
H. A. Bodner, Esq., Q.C.,	For Alberta Housing Corporation.
E. D. Stack, Esq., Q.C.,	For Gateway Building Supplies.
A. T. Murray, Esq.,	For William Weir.
W. A. Stevenson, Esq., and A. H. Lefever, Esq.,	For D. McColl.

DATE: May 22, 1974.

HELD AT: Edmonton, Alberta.

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Supreme Court Reporters
EDMONTON - ALBERTA

I N D E X

VOLUME 7

MAY 22, 1974

WITNESSES:

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PROCEEDINGS before The Honourable Mr. Justice J. M. Cairns, at Courtroom 17, The Law Courts, in the City of Edmonton, Province of Alberta, commencing at 9:45 a.m., Wednesday, May 22nd, A.D. 1974.

THE COMMISSIONER EXAMINES THE WITNESS:

THE COMMISSIONER: Before you proceed, you were going on to another topic before we adjourned yesterday.

MR. McLENNAN: Yes, sir.

THE COMMISSIONER: You are still under oath, Mr. Achtem?

A Yes, sir.

THE COMMISSIONER: Before we proceed I'd just wanted to clarify something for my own information arising out of this Preus matter.

Q THE COMMISSIONER: Now, as I gather, this agency, I forget the name of it, had a listing?

A Check Realty Limited, yes, sir.

Q Had a listing to sell this property for fifty-nine thousand roughly?

A 59,400 I believe.

Q Whatever the figure was, and did you go in and accept the offering which they wouldn't take later?

A I made an offer on an offer to purchase, yes, sir.

Q On the same terms as they had a listing for?

A As per their listing agreement, yes, sir.

Q And they wouldn't accept it?

A Mr. Preus would not accept it.

Q He wouldn't accept it?

A No, sir.

Q So then you reported that to whom, to Mr. Orysiuk or to whom?

A To both Mr. Orysiuk and Mr. McColl, sir.

Q That you couldn't get the property?

A Yes, sir.

Q And then you advised that it wasn't advisable to conduct a lawsuit in respect of it?

A Yes, sir.

Q And did you advise Mr., both these people or one of them?

A Mr. Orysiuk and Mr. McColl.

Q Yes.

A As I recollect I advised both, sir.

Q Now, was Mr. Orysiuk acting as Executive Director of the company when you advised him, or was he your agent or employee at that time?

A I object to answer the question onthe grounds previously stated, sir, I advised him, he was the Executive Director.

Q Because you were advising Mr. McColl at the same time?

A Yes, sir.

Q Now then, you eventually, within three months purchased this property for 104,000, roughly?

A Yes, sir.

Q On instructions of whom?

A Both Mr. Orysiuk and Mr. McColl, they were aware of the price I was offering.

Q That was done, or was it done as a company transaction or was it done with Mr. Orysiuk as an employee of yours?

A I object to answer the question on the grounds previously mentioned, sir, I approached Mr. Preus' lawyer at this time on it, myself.

Q No, I'm not talking about that, I'm talking about, you finally arranged that you could buy it for 104,000 and then you got authorization to pay 104,000 from the A.H.C., now who did you get that from and in what capacity were they working?

A I object to answer the question onthe grounds previously mentioned, I believe I got the authorization from both Mr. McColl and Mr. Orysiuk who worked for the Corporation.

Q Yes, but it was the company authorization you got?

A Yes, sir.

Q And they decided that on your advise that they would pay some $50,000 more than they might have got it had they conducted an action in respect of it, well that's obvious anyway.

A Sir, as I mentioned yesterday, for the question of specific performance on the interim --

Q That's right, but rather than having an action for specific performance it was decided that $50,000, roughly, would be paid more for the property than had you succeeded in the lawsuit?

A Yes, sir.

Q And of course you had lots of time as far as the lawsuit was concerned, and lawsuits as I understand take some time, because the thing was all out then, there was no particular rush in picking it up at that stage, was there, except the

Q (continued) longer you waited the higher the price went?

A Yes sir, there was one point I mentioned yesterday, that Preus had mentioned strongly that he signed the listing agreement under misrepresentation from the real estate company.

Q Yes, but you didn't have to believe that. Lots of people raise defences that aren't sound, don't they?

A Seemed a probability or a possibility to me, sir.

Q I know, but for $50,000 you can fight a pretty fair lawsuit, can't you.

A Yes, sir.

Q Well, that's that point cleared up.

Now then you, either you and Orysiuk, either as partners or as employer-employee were getting 5 per cent on the price paid, we have established that I think?

A I'm sorry sir?

Q Either you and/or Orysiuk, either as partners or as employer-employee were sharing 5 per cent commission on the price paid?

A I object answering that on the grounds previously mentioned, sir, yes sir.

Q So it seems obvious, I'm going to ask it anyway because I think I want it for the record, that the more that was paid for the property the more the two of you would gain in commission?

A I object to answering that on the grounds previously mentioned, yes sir, but that wasn't my major concern.

Q Oh no, it's just incidental as far as both of you were

Q (continued) concerned if you are getting 5 per cent. You were getting 5 per cent and you were kicking back or sharing 5 per cent with the Executive Director of the company?

A I object to answering that question on the grounds previously mentioned, yes sir.

Q That's a fact?

A Yes sir, but it was a fact, sir, that with all due respect that my major concern, I'm saying this with the deepest of sincerity, was to do a good job in getting a complete block of land, sir.

Q That's right, and in doing a good job you gained by the price that was paid for the property?

A I object to answering that question on the grounds previously stated, yes sir.

Q It can't be helped whether you would or not, but you actually would?

A Yes sir.

Q Now, what is bothering me, perhaps you can assist me as a lawyer, is that if more was paid or, than you first could have got this property, and that applies to any other property, could Mr. Orysiuk act in the interest of his Corporation as the executive head of it in authorizing you to pay more, that may be academic, that may be conclusion, what is your view on it?

A I object to answer that question on the grounds previously stated, my motivation for acting, sir --

Q (continued) amount of money involved, it would make a difference to him in regard to his duty to act as executive head of the company?

A I object to answering that question on the grounds previously stated, I believe his opinion was, I can't really speak for him, but to do a good job, sir.

THE COMMISSIONER: Well all right.

Q MR. McLENNAN: Mr. Achtem, you told us yesterday that you obtained, through several meetings, a legal opinion from Frank Jones both as to the tax ramifications and as to the legitimacy or legality of you entering into a deal with the Executive Director of the Corporation from whom you were earning commissions, you recall that evidence?

A I object to answering the question on the grounds previously stated, yes I do, sir.

Q And did you pay Mr. Jones for that legal opinion?

A I object to answering that question on the grounds previously stated, yes sir, I did.

THE COMMISSIONER: I can't hear, what's that answer?

A Yes I did, sir, I paid Mr. Jones.

Q MR. McLENNAN: And you appreciate that there may be a privilege that attaches insofar as Mr. Jones being able to give evidence to corroborate your suggestion that you did tell him those facts and that he did give you that opinion? Are you prepared to waive any privilege in that regard?

MR. REDMOND: Sir, I haven't yet had an opportunity to discuss that with Mr. Achtem and I think before he answers that question he should have the advice of counsel. I am prepared to undertake to discuss it with him when I have the opportunity to do so and to give him my advice as to what position should be taken on that matter.

THE COMMISSIONER: Well, do you want to clean it up right now?

MR. McLENNAN: I think it's a pretty fundamental matter, sir, I'm surprised that --

THE COMMISSIONER: Well, no, it's just that Mr. Redmond doesn't know what to advise because he hasn't been confronted with it yet.

MR. REDMOND: It has now arisen, sir, although I had anticipated the possibility, I have someone working on it for me.

THE COMMISSIONER: What do you mean, looking up the law?

MR. REDMOND: Yes, sir.

THE COMMISSIONER: How long does it take?

MR. REDMOND: I don't know, he hasn't told me yet, sir.

THE COMMISSIONER: How long will it take you to advise your client?

MR. REDMOND: I obviously can't do it while he's in the witness box, sir, I can do it --

THE COMMISSIONER: I can adjourn while you do it.

MR. REDMOND: I'm not in a position to do it this

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MR. REDMOND: (continued) morning, sir, I think it will be a day or two. If it becomes a matter of urgency, Mr. Achtem is going to be available at any time to answer the question when it's needed.

THE COMMISSIONER: Well, it is vital, no doubt about that.

MR. REDMOND: Yes, sir.

THE COMMISSIONER: Because he's told us exactly the opinion he got.

MR. REDMOND: Yes, sir.

THE COMMISSIONER: And Mr. Jones was a tax expert and there is some suggestion he may be asking about taxation, now was he asking about the point we have involved here.

MR. REDMOND: I appreciate the problem, sir, and I am quite prepared to consider the matter and advise my client as quickly as I can and I will do so, but I can't do it at this moment. If I do, the advice will not be as good as if it were considered properly.

THE COMMISSIONER: The advice you give will be just as good as the advice your student gets up when he briefsthe law.

MR. REDMOND: Sir, I don't always agree with my students.

THE COMMISSIONER: All right.

Well, Mr. McLennan, I'm afraid you will have to wait for that answer. That is going to hold us up about a week.

MR. McLENNAN: Well, all right.

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THE COMMISSIONER: Perhaps, could you get that by tomorrow?

MR. REDMOND: I can try, sir.

MR. McLENNAN: Perhaps we should put it on the record at the moment, sir, that for now the witness, through his counsel, objects to waiving the privilege in order that we cannot, at the moment, really call Mr. Jones as far as the witness is concerned.

THE COMMISSIONER: You are putting it on the record.

MR. McLENNAN: Is that the position, Mr. Redmond?

MR. REDMOND: No sir, we are not taking the position we are asking time to consider and to take the position one way or another, position properly to do so.

MR. McLENNAN: But you are not prepared to waive the privilege at the moment if there is a privilege?

THE COMMISSIONER: No, that's clear.

MR. REDMOND: I'm asking permission to waive that decision until we can consider it properly.

Q MR. McLENNAN: All right, Mr. Achtem, was there any other document other than the agreement of August 28th, is there any other document that you know of in relation to your commission that is outlining, or outlining your transaction between yourself and Orysiuk?

A There is, excuse me, I object to answering the question on the grounds previously mentioned.

Q What documents are there?

A There's a trust agreement.

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THE COMMISSIONER: We've got a better stand here today but you've got to speak so I can hear you.

A Sir, there is a trust agreement between me and Mr. Orysiuk.

Q MR. McLENNAN: Do you have a copy of that, sir?

MR. REDMOND: Sir, the original document was with the Tax Department sometime ago, I didn't do it but someone went to the Tax Department and got a photocopy of it. Unfortunately whoever got it has scribbled all over it and all I've got is a very badly scribbled copy of it.

THE COMMISSIONER: Probably the Tax Department scribbled on it, they've been in the habit of scribbling.

MR. REDMOND: I rather think it was someone else, from the information I have, sir, but what I have got is a xeroxed copy with a bunch of additional material on it.

THE COMMISSIONER: Have you not got a copy which is a copy without scribbling on it?

What are worried about, Mr. Steer, have you got a copy?

MR. STEER: Sir, now the question has been asked and answered, that writing on that piece of paper is scribbling that I made at a time I was discussing the whole matter with my client.

THE COMMISSIONER: Doodling.

MR. STEER: No sir, it's not doodling.

THE COMMISSIONER: There is no opinion in that scribble?

MR. STEER: There is no opinion on it but they are

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MR. STEER: (continued) notes I made and it never occurred to me, because it was, you know, it was just a copy, I wrote all over it while I was getting the matter together.

THE COMMISSIONER: Where is the original, Mr. Steer?

MR. STEER: As Mr. Redmond said the original is with the Tax Department.

THE COMMISSIONER: What interests have they got? I suppose they may have. Have you not got a copy of the document without your scribbling on it?

MR. STEER: I'm sorry, sir.

THE COMMISSIONER: Can you make a copy without your scribbling on it with a typewriter?

MR. REDMOND: That could be done, sir.

THE COMMISSIONER: If you gentlemen say that that is the document without some notes on it which Mr. Steer does not want to disclose, that's quite proper. We will have no objection to putting in a copy made by them.

MR. REDMOND: I could in fact, if the Court wishes, have the notes blanked out and Xeroxed without them. I think it will come through in proper form.

MR. STEER: I have no objection to that.

MR. REDMOND: I will arrange to do that.

MR. STEER: It is unfortunate that I did what I did. I apologize.

THE COMMISSIONER: What are you going to do now, Mr. McLennan?

MR. McLENNAN: There is a Xerox in the building. We can perhaps do that at the adjournment, sir, or perhaps the clerk could be excused and do it right now.

MR. REDMOND: I can indicate to him very quickly the several pieces of writing to be blanked out.

Q MR. McLENNAN: Are there any other documents, Mr. Achtem?

A I object to answering the question on the grounds as previously stated. There are not, sir.

THE COMMISSIONER: Of course there are other documents.

Q MR. McLENNAN: Evidencing the transaction between you and Mr. Orysiuk? Are there any other pieces of paper which purport to reflect the agreement between you and Mr. Orysiuk?

A I object to answering the question on the grounds as previously mentioned. No, there are not.

THE COMMISSIONER: Your answer is no?

A No, sir.

Q MR. McLENNAN: Now you acquired a piece of property known as the Mill Creek Syndicate Property?

A Yes, sir.

Q And was that in your area?

A No, sir.

Q That was in the area that Weber Brothers were attempting to acquire?

A As I found out later, yes.

Q You mean at the time you were negotiating with the Mill Creek Syndicate you didn't know they were dealing with Weber Brothers?

A It came to my knowledge that this Mill Creek Land Syndicate Limited had been approached by Weber Brothers. This would be sometime in October of 1969, middle of October, 1969, and I

understood from I believe talking to a few of the syndicate members, I knew a few of them, apparently there was some difficulty in acquiring the land by Weber Brothers. I understood there was a large number of shareholders in this company. I believe there are around 17 to 20 shareholders in the company. From what I could surmise, the fact there were so many shareholders it was hard to pinpoint them down on a share price. I happened to find out that Mr. John Corbett, a lawyer in town here, acted for this group. I knew Mr. Corbett quite well. At this point I went to the Housing Corporation advising them, that is Mr. Orysiuk and Mr. McColl, that I understood Weber Brothers was having some difficulty acquiring this particular piece of property. I advised them further that I felt confident that I could be able to acquire same, providing I could obtain their permission and providing further that I could make an amicable settlement with Weber Brothers. The indication given to me was that it was an important piece of property, that providing I could settle the matter with Weber Brothers I would be free to try to acquire it. In my mind I felt competent that it is possible to pick it up. I phoned Weber Brothers after getting permission from the Corporation. I believe I met with Mr. Joe Hrubizna. He is a realtor with Weber Brothers. I met with them, with Mr. Hrubizna, and advised them that I felt I could possibly pick this property up. I felt confident I could. We had a general discussion. In the discussion they said, "Well, if you are able to, what commission would you be agreeable to pay us?" We subsequently settled on my being able to

pay them a $4000 commission if I was successful in picking this property up. And I subsequently did succeed in acquiring the property through Mr. John Corbett, dealing directly with Mr. John Corbett.

Q Do you recall the purchase price was $318,000?

A I believe that would be about right.

Q Do you know, Mr. Achtem, that Weber Brothers through Clements Parlee were instructed to leave the Mill Creek Syndicate lands alone and let you pursue your endeavors in that regard?

A I can't recollect that.

Q You don't recall that?

A No.

Q What brought you to Weber Brothers to negotiate a commission with them?

A The information I was getting was that they negotiated or were attempting to buy the land and were having difficulty because there was so many owners.

Q Who did you get that information from?

A As I recollect it's a few of the syndicate members from the Mill Creek Syndicate.

Q This was outside your area?

A yes, sir.

Q How did you come on to the idea that anybody wanted the Mill Creek Syndicate lands? You didn't know Weber Brothers were working in the area?

A This was all after it was public, sir.

Q This was after it was public?

A Yes.

Q That's when you first contacted the Mill Creek people?

A I believe so. I had no prior contact with the Mill Creek people until I discussed with the Corporation and settled with Weber Brothers. That's the first contact I made on that piece of property.

THE COMMISSIONER: I thought you said you knew one or two of them?

A Yes, I did.

THE COMMISSIONER: That's why you thought you could get it.

A Yes, sir.

Q You must have had some contact with them before you went to the company.

Q MR. McLENNAN: Was this before or after the land play became public knowledge?

A I believe this was immediately after it became public knowledge- shortly thereafter.

Q You had no contact with anybody from Mill Creek before it became public knowledge?

A I didn't.

THE COMMISSIONER: Well, Weber Brothers, this gentleman, told you to go ahead. Did you then make some deal with Weber Brothers?

A Yes.

THE COMMISSIONER: And as to what the commission would be on the sale?

A Yes, sir.

THE COMMISSIONER: Why did you make the settlement later if you agreed on it before?

A We agreed on $4,000, sir.

THE COMMISSIONER: You settled on $4,000 later. You don't settle on something that you have already agreed on, surely. If you agreed on $4,000, then there was no need for settlement.

A Before I approached the Mill Creek Syndicate I talked to Weber Brothers advising them that I felt confident there was a good chance I could pick the property up. As a result of my meeting with Weber Brothers, they agreed to settle on, I would pay them if I was successful, a 4,000 real estate commission.

THE COMMISSIONER: There was no settlement at all.

A It was not a settlement. We agreed.

THE COMMISSIONER: I thought there was a dispute and you finally settled.

A No - well, we discussed what would be paid.

THE COMMISSIONER: That's before you did anything at all?

A Yes, sir.

THE COMMISSIONER: They knew they were going to get $4,000 before?

A Yes, sir.

MR. McLENNAN: Those negotiations with Weber Brothers were not before you acquired the land?

A They were before I acquired the lands.

Q Are you sure?

A Yes, sir.

Q I don't know that I have got an answer as to why you were

dealing outside your area with persons that Weber Brothers had already been dealing with. In a word could you tell me how you came on to that outside your area? Weber Brothers had already been negotiating; is that right?

A I understand they were, yes.

Q And how was it that you became involved outside your area with people who had already been negotiating with Weber Brothers?

A I was able to gather that they had difficulty in acquiring lands because there were so many shareholders. It was awkward I think getting them together. I have never searched the company, but I understood it was around 17 to 20 members and they could never get them together on price or get them together for a meeting or what.

Q How did it come to your attention that that was the case?

A I believe it was through one of the shareholders with Mill Creek Land Syndicate.

Q Why did he contact you?

A He didn't contact me. I happened to bump into the fellow. I didn't go out of my way to contact him and I don't believe he went out of his way to contact me.

Q Who is this person?

A Mr. Don Perry as I recollect. Mr. Don Perry or Art Gregg, but I believe it was Mr. Don Perry.

Q What did they advise you?

A As I was able to gather Weber Brothers had approached them and nobody had signed any agreement to sell their land, but they were contemplating maybe possibly selling the land.

Q As a result of receiving that information what did you do?

A The matter was already public, the land had not been picked up, and I considered this a very strategically located parcel of land. I felt that - I found out who the solicitor for this syndicate was - Mr. John Corbett. I had a good relationship with Mr. Corbett. I felt I would have a good chance of dealing with the solicitor on this, which I did after getting the approval.

Q What approval did you get?

A That I settle with Weber Brothers.

A Ours to purchase you mean, sir?

Q Yes, as to your entering the scene vis vis the Mill Creek syndicate.

A I spoke to Mr. Orysiuk and Mr. McColl, that I understood Weber Brothers had encountered some problems on the land. I understood there was such a large number of shareholders that there was some difficulty in consumating a deal. I felt by being able to deal directly with the solicitor, Mr. Corbett who I knew well and who was a very fair gentleman to deal with, that I would stand a better chance of being able to acquire the land.

THE COMMISSIONER: Better than Clement Parlee?

A Rather than dealing with the shareholders, sir.

THE COMMISSIONER: You were dealing with the solicitor.

A Yes, sir.

THE COMMISSIONER: Well, as I understand, the solicitors, maybe they could deal.

A Maybe they could, sir.

Q MR. McLENNAN: Who then said, "Okay, we'll hold Weber Brothers off; you go and see if you can make a deal with the Mill Creek syndicate."

A Nobody told me to pull Weber Brothers off.

Q No, but somebody told Clement Parlee to tell Weber Brothers to stay away from the Mill Creek syndicate while it was still secretive.

A The understanding was that Weber Brothers would try to pick it up. They were, had been working on it. I was able to gather

A (Cont.) that there was some difficulty in acquiring the land. I went to Mr. Orysiuk and Mr. McColl and advised them of what I thought the situation was. They advised me --

Q Yes, somebody told you to go ahead and see what you could do?

A Be sure I settle with Weber before I do anything.

Q Somebody told you that?

A Yes.

Q Who told you that?

A As I recollect both Mr. Orysiuk and Mr. McColl.

Q Did you meet them together?

A I believe so.

Q Do you remember that?

A To the best of my recollection, yes, I did. I had discussions with both of them on that particular parcel of land.

Q And they told you to go ahead and see what you could do but to settle with Weber Brothers first?

A No, they told me I would not be able to work on the land unless I was able to settle with Weber Brothers first. I think I convinced them that I was competent and capable perhaps to pick that parcel of land up; I felt.

Q Well, someone gave you those instructions?

A Yes.

Q Who?

A I would say both Mr. McColl and Mr. Orysiuk, both.

Q Together?

A As I recollect, yes, sir.

Q You appreciate that Mr. Orysiuk, if he gave you those

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Q (Cont.) instructions, stood to make 2½% of $318,000.00?

A I object to answering the question on the grounds previously stated. Yes, sir; again tantamount in my mind was doing a good job. Both Mr. McColl and Mr. Orysiuk had advised me this was important, an important parcel of land. It was quite strategically located and that was the most important thing in my mind.

Q Okay, the point is, Mr. Achtem, they told you that after you went to them and said that you knew some of the shareholders and their solicitor and you thought you could pick up the Mill Creek syndicate land?

A Yes, sir.

Q You initiated the events whereby you received instructions from the corporation to buy that land?

A Yes, sir.

Q Now, that was acquired after this whole land assembly was made public was it? The date I have is November 25th, 1969.

A Yes, or shortly thereafter it was made public, yes, sir.

Q It was made public in the middle of October, wasn't it?

A I believe October 17th, yes.

Q This is November 25th, 1969?

A Yes, sir.

Q So those lands were acquired after a public announcement was made?

A Yes, sir.

Q Do you remember the Bohaychuk Breitkreuz and Samis parcel?

A Yes, sir.

Q Did you acquire that one?

A Yes, sir.

THE COMMISSIONER: Is that another topic?

MR. McLENNAN: Another topic, sir?

THE COMMISSIONER: Well, of course, I believe you asked him about the 2½%, but had it been left with Weber Brothers he wouldn't get anything; isn't that correct, Mr. Achtem?

A Yes, sir; sir, if I might add one comment --

THE COMMISSIONER: They were doing it for 3%.

A I didn't know this, sir, until it was published in the paper in January '73.

THE COMMISSIONER: They were doing it for 3%?

A Yes, sir.

THE COMMISSIONER: And Mr. Orysiuk knew they were doing it for 3%?

A I object to answering the question on the ground previously stated. I assume he would have.

THE COMMISSIONER: Well, he was the head of everything and that is the biggest deal they had.

A My answer is, yes, sir.

THE COMMISSIONER: So if the deal was put through you, when you were successful, as you pointed out, Mr. Orysiuk would get 2½%. In other words if it had gone to Weber Brothers, the company would only pay 3%. So the company when it went through you paid 2% more than they would have if it had gone through Webers, isn't that correct? Isn't this a matter of fact?

A I object to answering the question on the grounds previously mentioned. That is a fact, sir, but I think the most important thing --

THE COMMISSIONER: Never mind that, this is a matter of arithmetic.

A That is correct, sir, but the important thing was acquiring the land.

THE COMMISSIONER: I know that, but I am saying that as a matter of fact had Weber Brothers bought it and put it through, the housing company would have paid Weber Brothers 3% if that was their agreement and it was, but when they authorized you to put it through it cost the company 5%. Whether they made money on it or not, I don't know; it is just a difference in percentages.

A Yes, sir, Mr. Orysiuk and Mr. McColl knew this. I think Mr. McColl knew how important the land was --

THE COMMISSIONER: And so did Mr. Orysiuk.

A -- yes, sir, and Mr. Orysiuk, both.

THE COMMISSIONER: And also what his interest was too.

A I object to answering that question on the grounds previously mentioned. Yes, sir.

Q MR. McLENNAN: Mr. Achtem, I asked you I think about the Bohaychuk, Breitkreuz and Samis parcel. Was that acquired by you?

A Yes, sir.

Q Do you remember the approximate value of that?

A That was a parcel up in the northern area there too, sir; almost at the top.

Q Was that outside your area?

A Outside my original area. I might point out --

Q Was it outside your original area?

A Yes, sir.

THE COMMISSIONER: What was the name?

MR. McLENNAN: Bohaychuk Breitkreuz and Samis.

THE COMMISSIONER: I am having some trouble getting these names straight.

A I think we could describe it as the Berube property.

THE COMMISSIONER: Is that B-e-r-u-b-e?

A Yes, sir.

THE COMMISSIONER: That's what they had the law suit about.

MR. McLENNAN: Yes, the same family.

THE COMMISSIONER: Wouldn't pay his wife. I wrote the judgment.

Q MR. McLENNAN: Well, let's get the numbers; Exhibit 27, please.

THE COMMISSIONER: That's the opposite of Malcolm or the other one.

MR. McLENNAN: Murdoch.

THE COMMISSIONER: Yes, I was on that one too. Mr. Stevenson was too. He didn't get the publicity.

Q MR. McLENNAN: Now, that parcel was acquired,

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Q (Cont.) Mr. Achtem, for 536,000, Bohaychuk Breitkreuz and Samis?

A I would say approximately, yes, sir.

Q Which produced a commission of $32,750.00?

A Yes, sir.

Q That parcel was outside your area, the original area?

A The original area.

Q And that was acquired after this land assembly was made public?

A Yes, sir.

Q Was that in Weber Brothers area?

A You could describe it as being Weber Brothers area. In all fairness if I may make one comment. I don't recollect that at any one time I was specifically told don't go into the north area. Maybe Mr. McColl might have told me that, maybe Mr. Orysiuk. In my mind as I recollect nobody ever told me, don't go into that area. I was given a specific block of land.

Q Nobody told you you were trespassing if you did, but nobody told you to go buy land there?

A That would be a fair statement.

Q All right, well, can you tell me who authorized you to buy that parcel in that area and when?

A There were three owners on that property, Mr. Ken Samis, Mr. Walter Breitkreuz, Mr. Bohaychuk, very ardent land dealers. I happen to know Mr. Ken Samis; he is well known to my family. I believe Mr. Samis originally came into the Alberta Housing Corporation office at one time, I think I was there, well, I must have been there, and he was having general conversation

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A (Cont.) with both Mr. McColl and Mr. Pollard. I believe he was there just for purposes of --

THE COMMISSIONER: Who was that man, Pollard?

A Pollard.

MR. McLENNAN: Alberta Housing Corporation employees.

A I think he was there on a fishing expedition more than anything else from what I could gather.

Q MR. McLENNAN: This was before the land assembly was made public?

A This would have been after.

Q All right.

A I remember talking to Mr. McColl after and I believe I advised him I knew Mr. Samis. Mr. Samis is a very ardent and successful land dealer. From my discussions with Mr. McColl, I believe I subsequently got the approval of Mr. Orysiuk, I can't remember that. I remember my initial discussions were with Mr. McColl. I was able to make an appointment to meet with Mr. Samis. I did meet Mr. Samis at his office he is a realtor with Commercial Realty or he was at the time and he was one of the partners in this property.

Q All I think I asked you was who authorized you to go and try to acquire the Bohaychuk Breitkreuz and Samis land or the Berube land?

A I would have to say both Mr. McColl and Mr. Orysiuk.

Q Is it your evidence that this authority came after Mr. Samis went to the Alberta Housing Corporation offices?

A Yes, sir; what I believe on a fishing expedition.

Q To see what he could get for his land?

A To see what was going on in the area; whether he wanted to sell it or not, I didn't know. In any event I gained permission after having advised them I knew Mr. Samis well, he having been a good friend of our family, my dad.

Q Well, you wouldn't take advantage of him then, would you?

A Take advantage of who, sir?

Q Mr. Samis?

A No, but I would be in a very easy position to deal with the gentleman; I knew him well; my dad knew him well.

THE COMMISSIONER: Well, the income tax gentleman knew the family so well he bought the land from them at a hundred dollars an acre to help them out.

A The income tax man?

THE COMMISSIONER: Oh, you are not in that. He bought it from them.

MR. McLENNAN: What authority were you given with regard to price to pay for the Bohaychuk, Breitkreuz and Samis land?

A The range was approximately 3500 as I recollect to $4,000.00.

Q And what did you get it for?

A I haven't looked at the agreement for some time but I believe it was a hundred dollars over and above the four thousand dollar figure. Mr. Samis was a realtor; one of the three partners in it. He felt - he originally put the deal together for him and his two partners and there should be some commission

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A (Cont.) coming to him.

Q He got 1%?

A Yes, I -

Q Yes.

A And he would have got 1%.

Q And Mr. McColl - I should show you the offer. The purchaser is you?

A Yes, sir.

Q And then it is approved by Mr. Orysiuk?

A Yes, sir.

Q And witnessed by Mr. McColl?

A Correct.

Q Now, can you tell me why after the whole of this land assembly was made public knowledge and after this guy struggles into the Alberta Housing Corporation offices on a fishing trip or otherwise, that you should be authorized at a 5% commission to buy this land?

A Sir, I felt I did a good competent job up to this point. They were satisfied with my work up to this point.

Q There was no secrecy then?

A Not really, but again there was no great big massing in the area immediately; people just stepped back and absorbed it.

Q Can you tell me why Mr. Pollard or Mr. Fyfe or Mr. Hetherington or Mr. McColl or Mr. Orysiuk or any of those gentlemen who were employees of the corporation wouldn't go and make an offer to Mr. Samis?

A I don't think they knew Mr. Samis to begin with. He is a real shrewd dealer.

THE COMMISSIONER: Wait a minute, they knew him because he was in fishing.

A Well, that would I presume that is the first time they would have met the gentleman, yes.

Q MR. McLENNAN: Yes, but he is a real estate agent.

A Yes, and a very competent one.

Q Yes, but he is in the business of selling property for money.

A All he can get.

Q Yes, to strangers and he doesn't sell to old friends of the family, does he?

A No, but I felt I had inroads with him and felt I could talk on a better basis, negotiating basis.

Q All right, Mr. Orysiuk authorized that?

A I believe it was Mr. McColl and myself and talked to Mr. Samis and subsequently witnessed by Mr. McColl and I believe subsequently thereafter approved by Mr. Orysiuk. I believe that is the order.

Q We are sort of reversing roles here, aren't we? Yesterday Mr. Orysiuk was your confidant the man you sought information and instructions from. Now we are hearing about Mr. McColl being of primary assistance to you. On the Mill Creek syndicate Mr. McColl was the man you talked to and Mr. Orysiuk later approved it?

A There was no assistance in acquiring it; Mr. McColl didn't assist me acquiring that property.

Q On the Bohaychuk, Breitkreuz and Samis property, it was Mr. McColl that authorized you to go and make the transaction?

A He would have been one of them, yes, sir.

Q Who was the other one?

A Mr. Orysiuk.

Q Mr. Orysiuk was Mr. McColl's senior?

A Yes, sir.

Q And Mr. Orysiuk on that transaction would have earned $16,375.00, half of $32,750.00?

A I object to answering the question on the grounds previously stated. Yes, sir.

THE COMMISSIONER: His evidence is very clear that both Orysiuk and McColl, "Authorized me to see Samis," that's what I have got written down. That's what you said isn't it? That's what I wrote down.

A Yes, sir, I would say that was a fair comment, yes, sir.

THE COMMISSIONER: A fair statement.

A A fair statement, yes, sir.

Q MR. McLENNAN: Now, Mr. Achtem, you acquired a Mary Paull property, did you?

A They had about three or four parcels, the Paulls in that area but I believe I acquired.

Q You acquired one parcel after it became public knowledge, this land assembly?

A That I can't remember, if he had showed me the interim agreement.

Q I am advised 30 acres were acquired from Mary Paull October

Q (Cont.) 17th, 1969 at a cost of $75,000.00.

A That was acquired to my recollection in Mr. Peter Savaryn's office, he is another lawyer, at twelve o'clock October 17th while the newspaper was just hitting the street.

Q Did you acquire that property?

A Yes, sir.

Q Was that in your area?

A Yes, sir.

Q Elmer Preus, was that another Preus from the one we talked about yesterday?

A I think Elmer is the one we had the trouble with that we discussed yesterday, the other brother would be Irwin.

Q Oh yes, Irwin. You acquired his land in September?

A Of '69, yes sir.

Q Yes. Elmer Preus we dealt with yesterday, you acquired his land in January I think it was?

A Yes, sir.

THE COMMISSIONER: In what?

MR. McLENNAN: January the following year, 1970.

Q Mr. McLENNAN: Gibb brothers, did you acquire lands from the Gibb brothers?

A Yes, sir.

Q And some of those lands were acquired in January of 1970?

A The two Gibb brothers I believe had approximately a quarter section of land, or 140 as I recollect, thc Papaschase Indian Reserve, the old railway, Papaschase railroad that ran through their land, breaking their parcel of land up I think into two parcels. I was able to acquire the larger portion of the quarter section, say 140 acres more or less, before the matter became public knowledge. They were wishing to hold back I believe it was about 17 acres, this is at the time, subsequently they decided they didn't want it, they said what's the point of keeping 17 acres, we are going to be

A (continued) giving up our, they had feeder cattle, they were going to sell their feeder cattle and get out of the business.

Q Well, you then acquired the 19 acre, I think it was 19 acre parcel in January of the following year?

A That would be about right, sir.

Q And how did you come to acquire that 19 acres?

A I believe Mr. Doug Matheson contacted me, either he, that is their lawyer, or one of the two Gibbs or both the Gibbs advising that they wished to sell it, but I believe it was from Mr. Matheson's office.

Q And did they contact you or Alberta Housing Corporation?

A They contacted me.

Q And did Alberta Housing Corporation then authorize you to go out and get the other 19 acres?

A Yes.

Q Can you think of any reason why Alberta Housing Corporation wouldn't have done that themselves?

A I felt I was an agent, they hired me to do a job, which I was completing it, just tying up a few loose ends.

Q But you tied up $100,000 or so in commissions, Mr. Achtem, I'm just wondering if you know any good reason why Alberta Housing Corporation, after it became public and after people indicated they wanted to sell, why they would pay you a 5 per cent commission to go buy their land?

A Well, they said they had used realtors before and there's nothing wrong with paying me a real estate commission for doing this, there is nothing wrong, irregular with it.

Q I don't think there is anything wrong but it's not very wise if you could buy it yourself if you hire somebody else at 5 per cent to go and buy it for you.

A There's the two views on that.

Q What's the other one?

A There's nothing wrong with it.

Q All right. Now in the spring of 1970 you met a Mr. Victor Farkas, do you recall that?

THE COMMISSIONER: Who's this?

MR. McLENNAN: Victor Farkas.

THE COMMISSIONER: Oh, that's another subject now?

MR. McLENNAN: Yes, sir.

A I met in your office, sir, a week before this hearing, you mentioned the name to me, at the time I couldn't recall the name, I said I thought I might have met him, I have given it deep thought since, I remember now that I was introduced to the gentleman once and I was given his business card. I believe he wanted to meet me for purposes of locating people active in the real estate business in Alberta.

Q Who introduced him to you or you to him?

A It would have been Mr. Orysiuk.

Q And some indication that you met him with a fellow called Johnson, do you know who that might be?

A You showed me a letter referring to Mr. Ben Johnson, and myself, I don't know who Mr. Ben Johnson is.

Q Dan Johnson?

A Or Dan Johnson, I don't know.

Q Do you know any Johnsons?

A I mentioned Mr. Peter Johnson yesterday, I know Peter Johnson.

Q Might he have been with you when you met Mr. Orysiuk, I'm sorry, Mr. Farkas?

A No, and I strongly doubt if that is the same Johnson that they would be referring to. It's a possibility but I doubt it.

THE COMMISSIONER: What was the date, I didn't get the date.

MR. McLENNAN: It was in the spring of 1970, sir.

A I met the gentleman on one occasion, as I best recollect and I wouldn't know the fellow if I seen him again.

THE COMMISSIONER: Where was it you met him, I didn't make that out, was he out there or were you down --

A No, he was out here, sir. I believe it could have been over lunch or he came up to my office or, I can't recollect how I met him, I remember him giving me his card now, his business card.

Q MR. McLENNAN: And he was interested primarily in real estate transactions that might be of interest to clients of his?

A Yes, sir.

Q Were you able to do anything together or for him, or with him?

A Nothing.

Q All right, now just before we leave this matter of Mill Woods, Mr. Achtem, was there anyone else that you acquired to assist you in connection with the earnings of your commissions in the

Q (continued) Mill Woods land assembly? Did you hire anyone else?

A No I didn't.

Q You didn't hire any real estate agent?

A No, I did not.

Q Or split any real estate commissions with any agents?

A I did not. There were, I believe, four or five realtors in the area at the time, they were a great concern to me but I e split no real estate commissions.

Q Well the vendor would pay their commission?

A That's normally the situation unless the arrangement is made otherwise, but normally the vendor does pay the real estate commission.

Q And you didn't pay any real estate commissions?

A Not real estate agents, no.

Q Or split?

A No, sir.

Q Now, on some of the transactions --

THE COMMISSIONER: Well he gave commission to Weber Bros. we know that.

Q MR. McLENNAN: Yes, other than that?

A Yes, sir.

Q You settled that Mill Creek syndicate with Weber Bros.?

A Yes, sir.

THE COMMISSIONER: And Mr. Orysiuk.

Q MR. McLENNAN: On these cutouts, cutouts are parcels that the vendor wanted to reserve back from the sale?

A Yes, they would be subdivided thereof, yes.

Q Did you know how to handle those?

A Yes, sir.

Q No problem handling those?

A No, but problems, I was initially when I went into the work we didn't encounter cutout problems, we hadn't discussed it, then they were coming up as I was dealing on the lands. At this point I was advised, try not to have any cutouts because it fragments the property, if so, put it to a bare minimum.

Q Who gave you those instructions?

A Both Mr. Orysiuk and Mr. McColl.

Q All right. On some occasions did you make that the vendor's solicitor's obligation?

A To do the cutout, on some occasions, yes.

Q So that you'd tell the vendor or his solicitor, look, if you want the house and five acres out, you go ahead and get a surveyor in, arrange a subdivision and submit it to the county for approval.

A But --

Q Send us the bill.

A At the time, not necessarily so, at the time of the negotiations we would describe the appropriate cutout, we just wouldn't leave it at anybody's discretion.

Q Oh, I appreciate that, but then you'd subsequently have to hire a surveyor to plot it on a plan?

A And if a survey was to be undertaken it was usually the vendor's expense unless they refused to pay for it. On

A (continued) occasion they refused to pay for it.

Q In which case you paid for it?

A I didn't, Alberta Housing Corporation paid for it.

Q Yes, that's what I mean.

A Yes, sir.

Q But that was just one of the items of negotiation?

A One of the items, there would be releasing problems, some farmers wanted to farm the land ad infinitum.

Q Now, with regards to the leasing, in 1970 the Corporation retained you to look after leasing of these lands to their former owner?

A Yes, sir.

Q Where he was a farmer?

A Yes.

Q And to another party where the former owner wasn't a farmer?

A Or back to the farmer himself.

Q That's what I say, to the farmer where he was the former owner, but Mr. Samis wouldn't want a lease, he wouldn't want to farm his for example, would he?

A There was even some question with Mr. Samis, I think he was concerned about --

Q Oh, okay. In any event the Corporation retained you to look after that problem?

THE COMMISSIONER: Was that after the property had all been purchased?

MR. McLENNAN: Yes sir.

A Yes, sir.

Q MR. McLENNAN: The following winter, the winter of 1970 or the spring of 1970?

A Spring, that would be the winter of '70.

Q All right --

THE COMMISSIONER: Do I gather this is another transaction entirely from what we've been talking about?

MR. McLENNAN: No, this is still Mill Woods.

THE COMMISSIONER: I know.

MR. McLENNAN: It's now leasing.

THE COMMISSIONER: It's purchased now.

MR. McLENNAN: You purchased the property and now it's leasing the lands back to the former owners.

THE COMMISSIONER: Price has got nothing to do with it there, or has it, I don't know.

MR. McLENNAN: No not really, sir.

Q MR. McLENNAN: Who retained you to do that, Mr. Achtem?

A I knew all the farmers in the area, having dealt with them, I felt it was the group of land fellows from the Corporation in total that came to me for assistance, I was going to bill them for my time.

Q Well that's okay. Who instructed you, or retained you to do that, that's what I asked you?

A It would be Mr. McColl, or Mr. Orysiuk, Mr. McColl, Mr. Pollard, I mean they'd come to me for questions, I'd come out to see them, discuss things with them and I would bill them, depend who would call me out.

Q Well you didn't get a general retainer to go ahead and look after the leasing?

A There was a comment made that leases would have to be entered into, some of the lands would be farmed, some wouldn't, but most would, and I was asked to prepare leases.

Q Which you did?

A Yes sir. Farm leases. And I negotiated with the farmers as to the rental structure on the farm lease.

Q And did you base your fees on 5 per cent of the value of the lease?

A I don't believe it was based on 5 per cent of the value of the lease, no.

THE COMMISSIONER: I can't hear.

A It wasn't based on a 5 per cent value of the lease, as I recollect.

Q MR. McLENNAN: Is the document I am showing you a true xeroxed copy of your account to Alberta Housing Corporation?

A That's correct, but I believe the 5 per cent value you are referring to is relating to my negotiations with the Gulf Oil Company who were attempting to run an easement, and oil pipeline through the property. I believe the 5 per cent was just referring to the negotiations I think I was involved with with Gulf Oil.

Q Well are you satisfied that that is the case?

A Yes sir.

MR. McLENNAN: Might that be marked, sir.

THE COMMISSIONER: Yes, because I don't know what you are talking about.

THE CLERK: Exhibit 37, sir.

XEROXED COPY OF ACCOUNT TO ALBERTA HOUSING CORPORATION MARKED EXHIBIT 37.

Q MR. McLENNAN: Mr. Achtem, that account totals $9990 and it was rendered in October 20th, 1971?

A Yes, sir.

Q Now did you render an account prior to that time about which there was some negotiation?

A Some what, sir?

Q In connection with your services, cleaning up the Mill Woods property?

A I could have, I can't recollect, sir.

Q You don't recall rendering an account about which there was some complaint, which you subsequently adjusted?

A Would that be on the Preus property you are speaking about?

Q I don't know.

A That I presume, that is what you would be referring to.

Q I don't know, sir.

A I agreed to forfeit commissions in settlement of the matter with Preus.

Q No, that's not what I'm talking about, we discussed that yesterday.

A Yes.

Q No, did you render an account which, or discuss an account

Q (continued) which was considered to large which was subsequently reduced in connection with Mill Woods?

A I can't recollect, I could have, I can't recollect, sir. If you have a document to show me perhaps --

Q I'm sorry I don't, your file doesn't indicate that you rendered an earlier account than Exhibit 37?

A I believe that would be my only account but I may be wrong.

Q All right, well you have no recollection of that event?

A No I don't, sir.

Q All right.

THE COMMISSIONER: Well this account here, 37, I am now looking at it, says professional services rendered negotiations, preparation of leases and Gulf Oil easement, there seems to be two matters involved there.

A Yes sir, the leasing and the negotiation with Gulf Oil.

THE COMMISSIONER: The two matters though, they are not divided, $4960.

Q MR. McLENNAN: Now, I wonder Mr. Achtem, if you could advise the Inquiry as to the sequence of events when you purchased the Mueller property which is the property you acquired from Melvyn and Simpson?

A Yes, it would show on the county map as Otto Mueller's property and I remember going out onto the property; this would be early in September or October of '69, but I believe it would be September of '69. At the farm I met Mrs. Mueller, she was busy stacking bales of hay, putting them into her barn. She

A (continued) was very busy, I told her I was out there, could possibly be interested in maybe buying her property or if she might be interested. She told me she was busy farming, see me at another time. I cameback another time, must have been a day later or two days later, drove into her yard, parked my car, knocked on her door, there was no answer. Her German Shepherd came barrelling down on me at this time.

THE COMMISSIONER: Do you recollect running back to your car?

A Sir, my car was too far away, thank God her door was opened, otherwise the dog would have had a chunk.

The door was open, fortunately, I ran in and who was there but Mrs. Mueller. She wasn't too happy.

THE COMMISSIONER: Did that cause any trouble?

A She wasn't too happy about it, I had to explain to her why I intruded, I found it hard to deal with her for some reason, I just didn't hit it off with her. She indicated that she's busy harvesting now and she, I think she asked me how much I would be prepared to pay if I was interested and I said, well we are, just a bit of general horse trading and she didn't indicate too much interest. I left her my name and number if she should ever be interested call me, because I might be interested. I believe I had the two contacts with her, possibly a third one, but I found her a very difficult lady to deal with.

THE COMMISSIONER: That's true of all ladies.

A Yes.

Q MR. McLENNAN: Well, you eventually acquired this property from Mr. Simpson and Mr. Melvyn?

A Yes.

Q How did that come about?

THE COMMISSIONER: Did he see them? I don't get the sequence. Did you see them before Mr. Simpson and Mr. Melvyn pumped her out by buying it?

A I'm quite certain I did, sir.

MR. REDMOND: Sir, was the question: did you see Melvyn and Simpson or did you see Mrs. Mueller?

THE COMMISSIONER: No, no, I was wondering what the sequence was. Did he see Mrs. Mueller prior to Mr. Simpson and Mr. Melvyn pumping her out because they were friends of the family and they had known her for many years and all that sort of stuff.

MR. REDMOND: I think that's the answer you got, sir. I just misheard the question, sir. I'm sorry.

A I believe I saw Mrs. Mueller before.

THE COMMISSIONER: She did not pay any attention to you?

A No, sir. She is pretty shrewd.

THE COMMISSIONER: I don't know whether she was or not. She might have made a better deal with you than with the others.

Q MR. McLENNAN: Mr. Achtem, how did it come about that you acquired the lands from Melvyn and Simpson?

A I was in my office one day, late in the day I believe it was.

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Mr. Frank Lieber came into my office, presented me with an option agreement, advising me that Mr. Tony Melvyn was in his office. At this point I never told - Mr. Lieber didn't know who I was acting for; he knew I was busy buying but I never told him who I was acting for. He said, "Ed, Mr. Melvyn is in the office. He understands you are busy buying land in that area. As his solicitor I am presenting it to you." And I looked at Ed and I read it over and I said, "There might be some interest. I will let you know." Then I made an inquiry, either going over to the Corporation -

THE COMMISSIONER: Were there no negotiations prior to him presenting you with an option? Was that all there was to it?

A That was all there was, sir.

THE COMMISSIONER: I have to figure that one out.

A He advised me that Mr. Melvyn had picked up an option on this property.

THE COMMISSIONER: He had an option and he talked to Mr. Lieber, his solicitor?

A Yes.

THE COMMISSIONER: And Mr. Lieber comes into your office, without being introduced as you knew him?

A Yes, sir.

THE COMMISSIONER: And presented you with an option?

A Yes, sir.

THE COMMISSIONER: And you have not discussed how much the option was to be?

A This was the option that Mr. Mueller had with Mrs. Mueller.

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THE COMMISSIONER: I thought he was going to sell it to you.

A Well, I guess that was the next step. Mr. Lieber presented it to me to see if I was possibly interested in the property.

THE COMMISSIONER: Oh, he had not drawn an option for you to buy it from them?

A No, sir.

THE COMMISSIONER: I see. All right.

A I told Mr. Lieber I would look at it and let him know.

Q MR. McLENNAN: At that point you knew what they could buy it for pursuant to the option?

A Yes, sir. I advised the Corporation of it.

Q Who did you advise?

A Both Mr. McColl and Mr. Orysiuk.

Q Why did you talk to both these guys all the time?

A I had been talking to both all the time. This time I did. This was during the day time. I went and showed it to them. I believe they were both present there then. They may not have been, but I just recollect I presented it to both of them. I am quite certain I did.

THE COMMISSIONER: Did they sit in the same office all the time?

A No, sir, but their offices were close together.

Q MR. McLENNAN: You presented them with -

A I showed them the option agreement and I said, "Fellows -" I knew a bit about Melvyn and Simpson, I knew they were land speculators, I said I didn't know whether they could possibly

syndicate this or it could be a bluff or what. I don't know. I showed it to them anyways. I believe we - Mrs. Mueller sold it to them for about 2500 an acre. I felt that it was a reasonable price. I advised them of that. I don't think either Mr. Orysiuk or Mr. McColl said that the price was out of line. I said here they got it for $2600 an acre.

THE COMMISSIONER: You said what?

A I said they got it for $2600 an acre. Do you wish to -

THE COMMISSIONER: How did you know that? That's what I was trying to find out a minute ago.

A How did I know what? I'm sorry.

THE COMMISSIONER: Mr. Lieber brought in the option which Melvyn had and laid it on your desk?

A Yes, sir.

THE COMMISSIONER: And you said what your principal would pay for it?

A I didn't say that. I said I would consider it. I didn't refer to my principals.

THE COMMISSIONER: Where does the hundred dollars come in? I have not heard of it yet.

A At the inquiry it came out.

THE COMMISSIONER: Yes, I know, but -

A Mr. Lieber brought the option agreement -

THE COMMISSIONER: Did Mr. Lieber say, "I want hundred dollars more than the option"?

A No, he didn't.

THE COMMISSIONER: How did you get the hundred dollars

that you talked to these people about now, to Orysiuk and McColl?

A Either I found out after the matter became public or at the inquiry.

THE COMMISSIONER: Well, I don't think you follow what I am talking about. I am trying to find out how you found out they wanted one hundred dollars more than they had paid. You had talked this over with Orysiuk you say, but I don't know whether you are saying that or -

A Sir, I didn't know what their profit was going to be.

THE COMMISSIONER: Lieber had not told you what he wanted?

A No, he didn't.

THE COMMISSIONER: You didn't know what they wanted when you talked to Orysiuk?

A No, I didn't.

THE COMMISSIONER: Did Orysiuk authorize you to pay so much or did you say you wanted to pay so much? Hundred dollars is new now?

A Yes, it is.

THE COMMISSIONER: Where does it arise?

A It is just new now. I showed both Mr. Orysiuk and Mr. McColl the option agreement that Mr. Melvyn and Simpson had with Mrs. Mueller. I said, "Here it is, fellows. What do you think?" They studied it on the map, they studied the evaluation, I presume. We all felt that it was quite a strategically located parcel of land. It was more or less in the middle of the whole block of land. They felt it was okay to go ahead and acquire it at - what was the option for, $2500?

MR. McLENNAN: Yes.

A So an offer was made for 2600 by myself to Mr. Melvyn and Mr. Simpson.

THE COMMISSIONER: That's what I was trying to get at. Where did you get instructions about the 2600?

A From both Mr. Orysiuk and Mr. McColl.

Q MR. McLENNAN: So what did you do then?

A I made an offer.

Q To who?

A To Mr. Melvyn and Mr. Simpson and it was accepted.

THE COMMISSIONER: I think you made the offer to Mr. Lieber. You were dealing at that stage with Mr. Lieber. He brought the document in. Didn't you go back to him?

A May I see the document, please.

THE COMMISSIONER: Show him the document. It's no use beating around the bush about it.

MR. McLENNAN: Mr. Achtem is looking at his file, sir.

THE COMMISSIONER: He should have done that before.

A I had, sir. On October 15th, 1969, I as purchaser made an offer to Mr. Melvyn as vendor, it was witnessed by Milton Schmidke who was in our office. He was an insurance agent at the back of our office. He was a witness to it.

Q MR. McLENNAN: I think the question is, Mr. Achtem, when you were armed with your instructions to pay up to 2600 an acre, what did you then do?

A I made a formal offer at $2600 an acre.

Q Who did you deal with?

A It must have been with Mr. Lieber.

THE COMMISSIONER: That's what I was suggesting long before. Mr. Lieber was the one who brought in the option, asked how much you would pay for it, you got your instructions and you went back to him?

A Yes, sir.

THE COMMISSIONER: You would not go to his client behind his back?

A No, sir.

THE COMMISSIONER: No. Solicitors don't do that.

Q MR. McLENNAN: Do I understand from what you said, Mr. Achtem, that you knew Mr. Melvyn and Mr. Simpson?

A I had met Melvyn a few times. Mr. Simpson I think I met him once before, I know Mr. Lieber acted for Mr. Melvyn. I think he handled his divorce.

Q They were persons of your acquaintance?

A Casual acquaintance.

Q You knew they were clients of the firm?

A Yes, Mr. Lieber's. Mr. Melvyn was.

Q You knew they were land speculators?

A Yes.

Q And was there any discussion then after you made your offer of $2600?

A If there was it would not have been much of a discussion.

Q What I would guess Mr. Lieber might say, "How about $2700?"

A Oh yes, they were fishing for a higher price.

Q That is what I am asking you.

A Yes, sir, there was. I can't recollect the full details. They said it was worth considerably more. They mentioned a price of as much as 3,000 an acre, 31 or 32 an acre.

Q What did you say to that?

A No, it's just ridiculous.

THE COMMISSIONER: That was all in Mr. Lieber's office or your office?

A Yes.

Q MR. McLENNAN: Did you say at any time "Either you accept $2600 or we'll expropriate" or words to that effect?

A I did not.

Q You heard the suggestion by -

A I heard it and it must have been made in Mr. Lieber's office not in my presence about expropriation.

Q What incentive did you offer these gentlemen as to why they should go for $2600?

A Couldn't buy it then.

Q Was there some reason for you to be this firm on the $100 mark-up?

A They were after every penny they could get.

Q Let me help you. Wasn't the Corporation's view that they should not get more than $100 mark-up on a piece of property they only had for four or five days?

A Yes, sir, I believe they gave me a leeway of hundred dollars or possibly two hundred dollars.

Q Who gave you those instructions?

A Either Mr. Orysiuk or Mr. McColl or both. I can't recall.

Q Was there some indignity expressed that these guys had walked in and grabbed an option from Mrs. Mueller and now three or four days later were peddling to the Corporation for a big profit? You had to watch for this, didn't you?

A Yes, this was the only indirect acquisition that I know of.

Q That's what I am asking you about. Didn't somebody or anybody in the Corporation say, "Look, these carpetbaggers have grabbed an option from Mrs. Mueller and they are not going to profit greatly on this land from us."

A That would be a fair comment, yes.

Q Who did this and who was the conversation with?

A I guess both Mr. McColl and Mr. Orysiuk. That's my best recollection.

Q You don't recall the conversation?

A I think it was with both of them.

THE COMMISSIONER: You were dealing with them or with the solicitor? Sometimes you were dealing with the solicitor and sometimes you were dealing with them.

MR. REDMOND: Sir, I think he was speaking about discussing with Mr. McColl or Mr. Orysiuk. I don't think he was talking about Melvyn and Simpson.

THE COMMISSIONER: I thought he was talking about them.

MR. REDMOND: No, sir.

MR. McLENNAN: No, sir.

Q MR. McLENNAN: Did you express the same view to either Melvyn or Simpson or to Mr. Lieber?

A What view was that, sir?

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E. P. Achtem - Examined by Mr. McLennan

Q That they are not going to take an option from Mrs. Mueller as a result of which they were going to make a great big profit from the Corporation.

A They didn't know I was acting for the Corporation. I didn't tell them I was acting for the Corporation. I told them, take it or leave it, the 2600.

Q They didn't know who you were acting for?

A I never advised them or Mr. Lieber.

Q I don't mean that you had. I meant whoever you were buying for, you were not in three or four days to allow these guys to make a great big profit. Did you tell them that or was it unnecessary to tell them?

A It was unnecessary to tell them. They were telling me they were going to pick it up. If I did not come up with a realistic price they were considering selling it. They were seriously considering syndicating it because this was a good piece of land.

THE COMMISSIONER: This was a sales talk.

A Yes. They had syndicated before. I had known that.

Q MR. McLENNAN: So eventually they accepted your offer anyway?

A Yes, sir.

Q And did you know at that time there was a 10-acre parcel excepted?

A Yes.

Q Do you know why it was excepted?

A Mrs. Mueller apparently wanted to live there the rest of her

days. She had quite an elaborate setup out there. She had a big house, a huge silo, very expensive one and buildings.

THE COMMISSIONER: And a shepherd dog.

A That's right.

THE COMMISSIONER: It seems the Muellers had a kind of second option -

A Yes, they had, sir.

THE COMMISSIONER: -- on the remaining 10 acres.

A They had.

THE COMMISSIONER: It's in the document. You saw it.

A The indications were that she would never sell it. She was to live there the rest of her days. I believe it could have been an oversight on my part. When I did make an offer on it I just had a photostat of the option and I believe Mr. Redmond has got my photostat and it didn't come out -

Q MR. McLENNAN: It's in your file. The exception did not come out well.

A I missed that. It's very illegible.

Q Yes.

A It reads, "containing 150 acres more or less -" a hard part to read is, "plus first option on the 10 acres at -" I think it's $2500 per acre. You can barely read it.

Q Then on the 13th of March, 1970 I understand that Mr. Steve Scherban - he was a real estate agent?

A Who?

Q Steve Scherban. You don't know?

A No, sir.

Q - contacted the Alberta Housing Corporation and offered to sell the additional 10 acres for $5,000 an acre, and that was referred to you?

A It was not.

Q You don't have any memory of dealing with the 10 acres the following spring?

A No.

MR. McLENNAN: Might we take a break now, sir?

THE COMMISSIONER: Yes.

(The inquiry was adjourned at 11:15 a.m.)

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E.P. Achtem - Examined by Mr. McLennan

PROCEEDINGS COMMENCING 11:30 A.M. THIS DATE:

Q MR. McLENNAN: Mr. Achtem, you are still under oath?

A Yes, sir.

Q I'm showing you a xerox copy of a document entitled Declaration of Trust.

MR. REDMOND: Mr. Achtem, a claim for protection should be made in connection with this document.

A I object to answering the question on the grounds previously stated, yes, sir.

Q MR. McLENNAN: This is the trust agreement you mentioned, the original of which was filed with the Minister of National Revenue?

A I object to answering the question for the reasons previously stated. Yes, sir.

MR. McLENNAN: Might that be marked, sir?

DECLARATION OF TRUST MARKED EXHIBIT 38.

THE COMMISSIONER: What date is that?

MR. McLENNAN: It is dated the 28th of - perhaps I can read it, sir, so everyone can follow the subsequent questions. It is entitled Declaration of Trust: This indenture made the 28th day of August, A.D., 1969 between Edward P. Achtem of the City of Edmonton etc., hereinafter referred to as the trustee --

THE COMMISSIONER: Dated the 28th of August?

MR. McLENNAN: Yes, sir - and Bohdan Robert Orysiuk, hereinafter referred to as the second party of the

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E.P. Achtem - Examined by Mr. McLennan

MR. McLENNAN: (Cont.) second part.

Know all men by these presents that the trustee will be in receipt of a 5% fee regarding the land acquisition to be undertaken for the Provincial Government of Alberta in that part of the County of Strathcona bordering the southeast portion of the City of Edmonton, and whereas the said second party will jointly contribute of his time and efforts along with the trustee in the aforementioned land acquisition, the second party will be solely possessed of one half of the aforementioned 5% fees so earned, which will hereinafter be referred to as the trust funds.

The said trustee his heirs and assigns to hereby acknowledge testify and declare that the trustee, his heirs and assigns do not claim to have any rights in the said trust fund but only to the uses and upon the trusts hereinafter expressed, that is to say, to hold and or invest said trust funds for the sole beneficial use and ownership of the second party and his legal representatives and on demand from the second party or his legal representatives to assign over all or any portion of the said trust funds to any persons, agent or legal entity that the second party or his legal representatives may so direct.

In witness whereof, the parties hereto have set their hands and seals in the City of Edmonton in the Province of Alberta on the day and year first above written. And that is signed by yourself and Mr. Orysiuk, Mr. Achtem?

A Yes, sir, I object to answering the question on the grounds previously stated. Yes, we did.

Q And it appears to be witnessed by your wife is it?

A Yes sir, I object to answering that question on the grounds previously mentioned. Yes, sir.

Q Now, could you advise the inquiry as to how that comes to be dated the 28th of August, sir?

A I object to answering on the grounds previously stated. That document was in fact executed, was rather prepared, executed in October, 1969. I would say approximately the first or second week in October of 1969, and - I'm sorry you asked me how it came to be dated that day?

Q Yes, sir?

A I object to answering on the grounds previously mentioned. When I saw Mr. Jones on it, I asked that he - he advised that there had to be a trust declaration prepared and I asked just what is the trust declaration about or what goes into it. And he indicated more or less what was going into it, and I said, "Well, I'm not familiar with this type of thing. Will you please suggest how we should draft it up?" So he was suggesting how we could draft it up and I was sitting across from his desk making notes as to how he suggested it should be drafted. Then I asked him "What date do you put on this agreement?" Because had to have a date for the agreement. He said, it doesn't really matter, any date, providing it is a date after the contract. I see the contract and the trust

A (Cont.) declaration and the contract which I have with the corporation are both dated the same date. The reason, that is its base. When it was typed out in the second or third week in October, Mrs. Orysiuk had typed this out and inadvertently the date the 28th of October was used. My intentions were to use the date, October 29th, '69, but for some reason or other got it, the date --

THE COMMISSIONER: Your intention was to do what?

A My intention was to use - Mr. Jones said, use any date other than October 28th. Any date thereafter didn't matter.

THE COMMISSIONER: No, no that --

A Excuse me, I am sorry, sir, August, August 28th.

MR. REDMOND: Claim the protection in giving your answers.

A I object to answering the quetion on the grounds already stated. The date is not October 28th, it is August 28th, I'm sorry.

Q MR. McLENNAN: I'm sorry, Mr. Achtem, I didn't follow that. Was it your intention to date it August 29th?

A I object to answering the question on the ground previously stated. When I queried Mr. Jones about it he said, any date as long as it is a date thereafter from the contract of August 28th, '69. And I said, "Well, what date are we going to use? Today's date, two weeks thereafter or the day thereafter?" And he indicated that it didn't matter as long as it was dated there, a date thereafter. Then it was my intention when I was going to have this typed out which was typed out in the

A (Cont.) second or third week, approximately in October '69, to use the date August 29th, 1969. But I see inadvertently Mrs. Orysiuk typed in --

THE COMMISSIONER: You don't know whether it was inadvertently or not. Only she knows that.

A Possibly, sir, but the date I had intended to use --

THE COMMISSIONER: Yes, but --

A I object to answering the question on the grounds previously stated. Was August 29th, '69.

THE COMMISSIONER: You didn't examine it when you signed it.

A I object to answering the question on the grounds previously stated. I examined it but I missed that date.

THE COMMISSIONER: Pretty vital, wasn't it?

A I object to answering that question on the grounds previously stated. 28th, 29th, I just forgot, but the document was in fact executed; it was typed out, executed and witnessed by my wife all at the same time, that would be in the second, approximately the second week in October, '69.

THE COMMISSIONER: That wasn't when you made the deal with Mr. Orysiuk at all. The deal was made with him two weeks after the 28th of August.

A Correct, sir. I object to answering the question on the ground previously stated. That is correct, sir. The agreement between Mr. Orysiuk and myself pending getting an opinion, a legal opinion, was entered into approximately the second week in September of '69. We were waiting back for an opinion. And it

A (Cont.) took two or three weeks to get an opinion on this through Mr. Jones.

Q MR. McLENNAN: Where was it typed, Mr. Achtem?

A I object to answering the question on the grounds previously mentioned. I am positive it was typed out at Mr. and Mrs. Orysiuk's house.

Q Why?

A I object to answering on the grounds previously mentioned. Because we had to have a trust agreement.

THE COMMISSIONER: Because what?

A We had to have a trust agreement to present.

THE COMMISSIONER: Didn't you have an office and a stenographer; you were a lawyer?

A I object to answering on the grounds previously mentioned. This was an agreement with Mr. Orysiuk and myself. We just asked Mrs. Orysiuk to type it out.

THE COMMISSIONER: You wouldn't do it in your own office where you had the facilities?

A I object to answering on the grounds previously mentioned, sir. I didn't use my office for hardly any purposes during this time. I did my own searches; I did my own caveats; I wrote my own caveats. I made little or no use of the girls in the office.

THE COMMISSIONER: Did Mrs. Orysiuk draw the caveats for you?

A I object to answering on the grounds previously stated. No, sir, they were handwritten by myself to keep the matter

A (Cont.) confidential.

THE COMMISSIONER: But Mrs. Orysiuk did it to keep it confidential, you said.

A I was referring to the caveats.

THE COMMISSIONER: Oh, I thought you meant the trust deed.

Q MR. McLENNAN: Well, Mr. Achtem, there is nothing in the Declaration of Trust that you had to keep confidential, was there?

A I object to answering the question on the ground previously stated. I never gave it thought.

Q Well, did you keep a copy?

A I object to answering on the grounds previously stated. Yes, I did, sir.

Q Where is it?

A Could be at home.

Q Well, is it a pretty important document, isn't it?

A Yes, sir.

Q Did Mr. Orysiuk keep a copy?

A I object to answering the question on the grounds previously stated. I believe he did have a copy.

Q Do you know why your counsel had to get a copy from the income tax department?

MR. REDMOND: Sir, the evidence was not that I got a copy from the tax department. I got it from other counsel; I came into this case relatively late.

THE COMMISSIONER: No one is suggesting that you were mixed up in a conspiracy, Mr. Redmond.

MR. REDMOND: I know that, sir, but the question put to the witness was wrong.

MR. McLENNAN: I didn't mean you, Mr. Redmond. I took it from what you said earlier that somebody had to get a copy from the income tax department.

MR. REDMOND: Somebody did.

Q MR. McLENNAN: Can you tell me, Mr. Achtem, why somebody - you retained somebody to act for you?

A For what purpose, sir?

Q I don't know for what purpose but in any event they got a copy of the Declaration of Trust from the income tax department.

A I object to answering the question on the grounds previously mentioned. I went down and got a copy.

Q All right, why did you go down to the income tax department for a copy?

A I object to answering on the grounds previously stated. Because I couldn't find my copy.

THE COMMISSIONER: Well, did not Mr. Orysiuk have a copy; you just said he did.

A I object to answering the question on the grounds previously stated. I believe he had a copy, sir.

THE COMMISSIONER: Well, it was a pretty important document, wasn't it, worth one hundred and sixty thousand.

A I object to answering the question on the grounds previously

A (Cont.) stated. I presume he must have had a copy, sir.

Q MR. McLENNAN: In any event Exhibit 38 was typed at Mr. and Mrs. Orysiuk's home by Mrs. Orysiuk?

A I object to answering on the grounds previously stated. Yes, sir.

Q And Exhibit 3 was typed by Mrs. Orysiuk at the Alberta Housing Corporation offices?

A I object to answering on the grounds previously stated. I'm quite certain it was Mrs. Orysiuk. It could have been Mrs. McColl but I doubt it. I believe it was Mrs. Orysiuk. I don't know who in fact, but one of the two. I am quite certain it was Mrs. Orysiuk who typed it out.

Q But in any event it was typed at the offices of the Alberta Housing Corporation?

A I object to answering the question on the ground previously stated. Yes, sir.

Q No doubt about that?

A No doubt about that.

THE COMMISSIONER: What is that Exhibit 3?

MR. McLENNAN: That is the commission agreement or the employment agreement.

THE COMMISSIONER: Oh, yes.

Q MR. McLENNAN: So they definitely wouldn't be done on the same typewriter, Mr. Achtem?

A I object to answering that on the grounds previously mentioned. I would certainly think not.

Q There was no way that it could be?

A No, they couldn't be.

THE COMMISSIONER: Unless you took the typewriter home with you.

A I object -.

THE COMMISSIONER: That's not part of the investigation.

A I object to answering on the grounds previously stated. They would be two different typewriters, sir.

THE COMMISSIONER: Well, do you have a vault in your office?

A I object on the grounds - no vault, sir, no.

THE COMMISSIONER: Do you have a place where you keep documents such as wills and things like that?

A Filing cabinet, sir.

Q Did you keep any documents there or did you keep them at home?

A My own personal documents, sir?

THE COMMISSIONER: Yes.

A At both places.

THE COMMISSIONER: I see.

Q MR. McLENNAN: Mr. Achtem, did you consult a solicitor prior to drawing Exhibit 3?

A What is Exhibit 3?

Q Exhibit 3 is the employment agreement or commission agreement?

A I did not.

Q The last paragraph of that agreement says: It is further understood and agreed that these payments under part 2 herein constitute full and complete remuneration to be paid to the

Q (Cont.) agent or authorized nominees without any right to acceleration of payment or interest.

A Can I see that, sir?

Q Yes, I'm sorry.

A Yes, sir.

Q What is the purpose of that paragraph?

A As I best recollect, Mr. Orysiuk stated to me that this was the total of my agreement. I think they were concerned about real estate commissions to be paid to realtors, things of that nature. That's why I put that in there to tell them and Mr. McColl that I would like to have it in agreement form with my name because they were dealing with me.

Q Yes, but that particular paragraph; do you know the purpose of that paragraph?

A I believe if I ever wanted my money sooner then I couldn't. I wanted it over a five year period.

THE COMMISSIONER: Was that for your benefit or for the corporation's benefit?

A That I don't know, sir.

THE COMMISSIONER: They weren't that hard up.

A No, I believe not, sir.

THE COMMISSIONER: No.

Q MR. McLENNAN: Mr. Achtem does that paragraph as far as you were concerned have any particular use; is there any necessity for that paragraph in that agreement?

A Not really; as I recollect it was put in there on the direction of Mr. Orysiuk.

Q You didn't use a precedent?

A No.

Q Well, I put it to you, sir, that the necessity for that paragraph in that agreement was so the Minister of National Revenue said, can't say, part of your earnings include interest. You are taking it without interest but unless there is an interest provision, "We'll allocate an interest rate."

A That definitely wasn't thought of at the time by myself.

Q And you didn't appreciate that it was necessary to say that you cannot withdraw these funds any quicker than one fifth every year over five years or the Minister of National Revenue could deem it all income in 1969?

A Most definitely, did not, no, sir.

Q And you sought no advice on it?

A No, I didn't, sir.

Q All right, now, in 1970 you bought a warehouse which you leased to the corporation?

A Yes, sir.

Q And could you advise the inquiry as to how that came about?

A I recall being over at the Alberta Housing Corporation offices; this would be in 1970, spring of '70. And I was there I believe for the purposes of the leasing prior to being discussed.

THE COMMISSIONER: What was that?

A I was there relating to leasing of the Mill Wood properties. And I was leaving the back portion of the Alberta Housing offices. There are four offices in the Alberta Housing

A (Cont.) Corporation's building. As you come into the back of the building there is four offices but I was passing these four offices at the time. The door to one of the offices was open. It was either the second or third office. I believe it was either the second or third office; there was four of them there. I believe this was Mr. Vern Pollard's office. They were present inside two or three individuals. As I was passing the office the door was open; I was recognized and they said, "Hi Ed." I said, "Hi" and he said,"how about joining us for a coffee?" they were having coffee at the time. I went into the office, sat down and I obtained a cup of coffee. And there was just general chit-chat going on. I cannot swear positively who was present but I'm quite certain Mr. Vern Pollard was there. I believe Gary Shantz was there. I am not certain of it but I believe so. And Mr. Wayne Hendell. I believe it was those three gentlemen. The one I recollect the best and I am not swearing positively they were there but I believe it was Mr. Vern Pollard. It would be his office I think. He would be sitting behind his desk. There was two or three fellows there. In any event I had coffee with them. There was general discussions as - general day to day discussion and in the course of conversation the gentlemen got into conversation about warehouses.

A (continued) I was taking this all in, they had indicated that they were going out to look at a few warehouses, I believe two or three. I don't believe they gave me the addresses or, they didn't give me anything but I believe in the course of the conversation warehousing was described that they were going to go out and look at in the northwest portion of the city. That is an industrial area. That's where I found out about it, about they were looking for a warehouse.

Q Well, as a result of that information what did you do?

A I remember following it up, I was interested, I made a few more inquiries, I know I had a conversation with both Mr. Orysiuk and Mr. McColl about it and I asked, I don't know specifically who I went to first; I asked, and I said I understand you fellows are looking for a warehouse and apparently it was for lease purposes. And I said is there any, is this a closed matter or is it any possibility that I could possibly go out and look for a warehouse for you for purposes of leasing. And the answer given to me was no.

Q Is this conversation the same three guys in the room you are talking about?

A I don't think at that time it was, I can't recollect, but that is where I initially got the information that they were looking for a warehouse.

Q Well, so then you went and talked to somebody and said is this a closed deal or can I get involved?

A Yes, sir.

Q Who did you talk to about that?

A I would have talked to both Mr. Orysiuk, Mr. McColl.

THE COMMISSIONER: They were together again?

A I don't think they were together, they might have been, I can't remember, sir.

THE COMMISSIONER: They never seem to stay apart, do they, always seem to be together.

A Sir, they did work hand-in-hand.

THE COMMISSIONER: I'm sure.

A But I did discuss it with both of them, whether together or not I can't recall, sir. In any event I was able to establish that they were looking for a warehouse and I could look if I wanted to, and I certainly did.

Q MR. McLENNAN: Well, all right, did you find out how many square feet they required?

A I believe they were looking for anywheres from 5,000 to 10,000 square foot building, warehouse building.

Q And how much yard they required?

A I don't think I needed that.

Q How much office space as against warehouse space?

A I believe they wanted some office space and warehouse space in back, mind you this is common in any warehouse.

Q Well who did you acquire that information from as to what facilities they required?

A Through both McColl, Orysiuk and McColl, as I recollect. It wasn't a closed matter.

Q Well, all right, as a result of receiving this information what did you do?

A My next step, I certainly wasn't an authority on warehousing, I contacted Mr. Ted Kolbuc, Ted Kolbuc is a competent land evaluator, he is presently with Weber Bros., he is a good friend of mine. I advised him that I, Alberta Housing was looking for a warehouse for lease purposes, would he assist me on it and I would compensate him for his time. He said he'd be only too glad to help me.

Q And who was he with?

A I beg your pardon?

Q Who was he with?

A He's with Weber now.

Q No, then?

A Then he was, I believe it was Royal Trust.

Q So what happened?

A I knew the area that they were interested in, this was in the northwest, their offices are in the northwest, I spent a lot of time with Ted Kolbuc, we went on numerous luncheon dates, we'd drive through the area, we'd drive through that whole industrial area back and forth within a period, I'd say, of three hours and canvass it pretty thoroughly. I remember canvassing the area with him, I remember checking with multiple listings and realtors as to availability. There wouldn't be all that many available, I kept a running record which I was just able to find and gave it to Mr. Redmond; I believe he's got it, that was a record made at the time.

Q Yes?

A And I told him quite frankly I didn't know too much about

A (continued) warehousing, if he would assist me in trying to find a good warehouse, assist me in setting up a good pro forma as for rental structure. This is his line of work, he's a land appraiser and that and he's a good friend of mine. We looked at numerous buildings, there's quite a few listed here.

THE COMMISSIONER: Well was he doing this because he was a nice chap or was he --

A He was a friend of mine but I advised I would pay him for his services.

THE COMMISSIONER: Oh yes, that's what I meant.

A Yes sir. All told I spent two to three weekends with Mr. Kolbuc, Saturdays, driving through the area, canvassing with realtors. The building that Mr. Kolbuc and myself were able to discern was the best building was a building called the Columbia Tile and Terrazzo Building, that's at 14705 - 116th Avenue, it was owned or still owned by Mr. Jack Holms. Mr. Kolbuc was very impressed with the building, the reasons being that this company was in the tile and terrazzo building and they had really fixed the building up quite nice, it was a 10,000 square foot warehouse building, well constructed. Mr. Holms advised that he had built it himself. I reached a tentative sale agreement on it, he was at that time saying he was winding, he was going to sell his business, tile and terrazzo bussiness, we tentatively agreed, well we agreed to a price, a sale price, I believe, of $105,000, this being a 10,000 square foot warehouse.

A (continued) He subsequently contacted me, this would be shortly thereafter, saying, Ed, I'm sorry, I'm having problems with the disposition of my business, or I just don't want to sell quite right now but I will want to sell in the near future. In any event that was the best building I looked at with Mr. Kolbuc, and we looked at other buildings, the ones listed here. The Fortier Building on 118th Avenue, 14410 - 118th Avenue, I even have the Overhead Door listed here, I've got, note, a price of $75,000 sale price, I don't know how I got that, maybe I got that through multiple listing, I can't recollect, but that's the building I subsequently bought.

Q All right, well you bought the Overhead Door Building?

A Yes, sir.

Q And that's the building that was subsequently leased to the Alberta Housing Corporation?

A Yes, sir.

Q And before you bought it did you inquire as to whether or not it was suitable for Alberta Housing's needs?

THE COMMISSIONER: Well before, just a second, Mr. McLennan, did he pay for it?

MR. McLENNAN: Well, I'll --

A I made an offer through Knowlton Realty, sir, Mr. Don McMartin.

Q Is this a xeroxed copy of that offer, Mr. Achtem?

A Yes sir.

MR. McLENNAN: Might that be marked, sir.

XEROXED COPY OF OFFER MARKED EXHIBIT 39.

A Why I phoned Knowlton Realty, they are, I would say, the largest, Knowlton Realty would be the largest warehouse leasing agents in the City of Edmonton; I would venture to guess that they do --

THE COMMISSIONER: Is that Melton?

A Excuse me, Knowlton Realty, they do, I'd say, at least 50 per cent of the, at this time anyway, they did 50 per cent of the warehouse renting in the area. I contacted Knowlton, got hold of Mr. Don McMartin, he was the one that brought my attention to this specific building, the Overhead Door Building, the one that I subsequently made an offer on, which was accepted.

Q Well, Mr. Achtem, before you made that offer, which is Exhibit 39, did you determine whether or not it was satisfactory for the needs of Alberta Housing Corporation?

A Again I go back, I am trying to recollect as best I can, I remember in your office when I met there about a week before the hearing started here, you mentioned did I know Mr. Heatherington. That didn't ring a bell with me at the time, I believe it's Mr. Ross or Mr. Ron Heatherington, I believe he was the gentleman that went out with me, maybe him and a few other fellows from the Corporation, to look at the specific building. I recollect that.

Q Before you made your offer?

A This would have had to have been after.

Q How long after?

A Immediately thereafter.

Q Well, like the same day or the next day?

A Shortly thereafter, I don't know, a week, I can't remember the exact --

THE COMMISSIONER: Who is Mr. Heatherington?

A I believe he works for the Corporation, Alberta Housing Corporation. Ross or Ron Heatherington, but I recollect now going out and looking at the warehouse with him, this specific building that was subsequently leased to the Corporation.

Q MR. McLENNAN: Well then, you say that that was after you had made the offer which is marked Exhibit 39?

A I'd say I'm positive, quite positive, yes.

Q Well now, what was your intention at that time, Mr. Achtem, if Alberta Housing Corporation wasn't interested in this warehouse?

A Then I wouldn't buy it.

Q Well you had already made an offer on it though, you tell me?

A Yes, it was subject to financing, which is quite standard procedure. When you buy something, if you can't do anything with the property you make it subject to financing, which I had on there.

Q Well, by subject to financing did you mean subject to you being able to satisfy yourself Alberta Housing Corporation would enter into a satisfactory lease with you?

A Yes sir, or some form of commitment with me, yes.

Q And did you receive such a commitment within a few days?

A Yes sir, I don't know the exact date but I did receive a commitment.

Q How soon did you receive the commitment from when Mr.

Q (continued) Heatherington went out with you to look at the property?

A That I can't say, sir, perhaps you have the letter of commitment there. I don't know the specific day I went out with Mr. Heatherington other than that they wanted to go out and look at the building and I went out and showed it to them. There was more than Mr. Heatherington there.

Q Who else was there?

A I can't recall, there would be a couple of people from the Corporation.

THE COMMISSIONER: Mr. McColl?

A There wouldn't have been Mr. McColl.

Q MR. McLENNAN: Mr. Pollard?

A Could have been Mr. Pollard.

Q It wouldn't have been Mr. Orysiuk?

A No sir.

Q Do you recall the real estate agent being present?

A Knowlton Realty?

Q Yes.

A No, he wasn't present.

Q Some real estate agent was present?

A No.

Q That's my information.

A Possibly, but to the best of my recollection I am quite certain I'm right, I'd say no.

Q It still had the For Sale sign on it when you were looking at it?

A Again you asked me in your office when I was there, I believe there was a For Sale sign, I can't honestly say there was, but there very likely was a For Sale sign on it.

Q And you made this offer to purchase on the 14th of May and it was accepted on the 19th of May?

A Yes, sir.

Q Prior to the acceptance, did you have anybody out looking at the property, anybody from Alberta Housing?

A I could have, I don't think so, but I could have.

THE COMMISSIONER: Well when did you have Heatherington out there?

A Sir, I can't recall the exact date, sir. I know that they requested to go out and look at it, it wasn't me requesting them.

THE COMMISSIONER: How did they know anything about it?

A I advised them about it.

THE COMMISSIONER: That you had a building?

A Yes, sir.

Q MR. McLENNAN: Who did you advise?

A I presume I put it in the form of a letter or, which I left with the Corporation, I can't recollect how or who I advised but I recall them wanting to go out and look at the building, which I took them out in my own car. I remember taking my car.

THE COMMISSIONER: That was before you bought it, you wanted to make sure they wanted it?

A Yes sir, but after I had the offer to purchase signed.

Q So it was after the 19th of May?

A I'd say it would have to be but I'm not going to swear to it, but presumably after the 19th of May.

THE COMMISSIONER: Was it after the 14th of May?

A It would have to be after the 14th of May.

THE COMMISSIONER: The 14th of May was the offer?

A Yes sir.

MR. McLENNAN: Date of offer, yes sir.

Q MR. McLENNAN: Mr. Achtem, are you satisfied that that is accurate, that the date of the offer would have been the 14th?

A Yes, 14th of May, '70, yes.

Q Do you know what the five-day delay was all about? It wasn't accepted until the 19th.

A The realtor would have to go to the owners, Mr. Berry, to get, to negotiate the deal with them, as I see the offer was originally for 63,500, then was a counter by Mr. Berry at 65,000, which was the subsequent purchase price.

Q Which you accepted?

A Yes, sir.

Q You accepted the counter?

A Yes, sir.

Q All right, I'm showing you a letter of intent dated May 22nd, 1970, do you recognize that?

A Yes, sir.

Q You have seen that before?

A Yes, sir, it's got my signature on it.

Q And under what circumstances did you receive that?

A I presume it was given to me or mailed to me.

Q Do you have a file on any of this containing a copy of your letter, or any letters to you?

A Sir, I have endeavoured to find my file on this and I cannot, it could be available and I will look for it. I have been looking, I'm not the best to filing papers, but if I find it I will present it to you. It would be a copy of that letter.

Q You have tried to find your file and can't, I presume?

A Yes, I have sir.

THE COMMISSIONER: I hope you don't lose clients' files the same as you do your own.

A On occasion I think files can be misplaced, sir.

Q MR. McLENNAN: Mr. Achtem, this letter of intent that you recognize is dated May 22nd, 1970?

A Yes, sir.

Q Do you remember when you received it?

A I could have received it that very day or the day after, in the mail. I don't recall the exact time, it would be that date or the day --

Q Do you recall when you signed it?

A It could be that date or it could be, if I obtained it at their offices I presume I would have signed it on the 22nd of May. If it had been mailed out to me I would have signed it thereafter.

Q All right, that is three days after your offer was accepted?

A Yes.

Q Can you tell me -- perhaps that should be marked.

THE COMMISSIONER: 40, I think.

LETTER OF INTENT MARKED EXHIBIT 40.

Q MR. McLENNAN: Can you tell me what happened during that three days?

A That's from, what three days are these, I'm sorry, sir?

Q From the 19th when your, when you made an offer with a thousand dollars down subject to financing on the 19th of May.

A Up until the 22nd?

Q Yes, on the 22nd you had an agreement with the Corporation to lease that space?

A And you are asking what happened during this period?

Q Yes.

A As far as I'm concerned what happened?

Q Yes.

A I don't recall specifically.

Q Well that's going at a pretty good clip, three days after you buy a building you've got it fully leased for eight years?

A Yes it is.

Q Well how did you arrange that?

A I didn't arrange it, I made a submission and they accepted it.

Q Where is your submission?

A Would there not be a copy on file?

Q Haven't been able to find any such thing.

A I presume I must have sent them a letter or orally said I am giving it to you but I would presume it would be more appropriate to do it by way of a letter.

Q Well who did you submit an offer to, either by letter or orally?

A Could have been Mr. Orysiuk, could have been Mr. McColl, could have been Mr. Pollard, I would think one of the three of them.

Q You don't recall?

A No, I don't, sir.

Q What did you do with Exhibit 40 when you got it?

A Which is Exhibit 40?

Q That's the instructions to you, yes?

A I used that for purposes of obtaining a mortgage.

Q And how soon did you have the mortgage arranged?

A With a tenant of that nature it wouldn't take long, I got it right away.

Q And the purpose of this document, Exhibit 40, is to present to the mortgage company for the purpose of financing?

A That is what is normally done, yes, sir.

Q And did the mortgage company request that the lease be eight years instead of five?

A No.

Q Do you know why the lease was renegotiated from five years to eight years?

A My offer to them was for a five-year lease with five-year option. As I recollect I believe it was Mr. Orysiuk that stated that they would like to have it for a term certain of eight years because that would satisfy their needs, their future needs. I said, fine, that was to my benefit.

Q Yes.

A Yes sir.

Q You negotiated a net, net, net, net lease?

A I don't know if it is what you call negotiation, this is where Mr. Kolbuc helped me out, Mr. Kolbuc gave me great assistance here, I wasn't all that familiar as to rental structure. He suggested I make my submission on that basis, it's, is it $1.55 per square foot.

Q All right, you just completed probably the most expensive real estate acquisition anybody in the Province of Alberta ever had the opportunity to do, are you suggesting you didn't know anything about leases?

A I had a good general idea about leasing but not as to the exact rental structure. I would suggest most people wouldn't unless they've, they are right on top of it, they have just recently rented a building, the rental structures on warehouses will vary. Ten years ago maybe it was a dollar a square foot on a net lease basis, then it went up to say maybe a dollar fifty, I believe presently on a net basis it must be around $2 or $2.25.

Q How did you arrive at $1.55 a square foot?

A Through Mr. Kolbuc's recommendation.

Q How did you arrive at it though?

A Mr. Kolbuc suggested I use a dollar fifty-five.

Q On a net, net basis?

A Yes, sir.

THE COMMISSIONER: What's this net, net, net business, I don't know what you are talking about, I may not be educated

THE COMMISSIONER: (continued) enough.

Q MR. McLENNAN: That means, Mr. Achtem, does it not, that maintenance, taxes --

A Upkeep, not upkeep but the general expenses and the operation of the building are paid for by the lessee.

Q Insurance?

A Yes, sir.

Q Those are the three things, maintenance, insurance and taxes?

A Are paid for by the lessee.

Q Which are ordinarily the responsibilities of a lessor in the absence of a lease?

A In the absence of a lease.

Q But you can negotiate so that your rental is net to you?

A Correct, sir.

Q Any expenses in connection with the property are borne by the tenant?

A Yes, sir.

Q That's the kind of a deal you negotiated with Alberta Housing Corporation?

A Correct, this net.

Q Can you tell me who agreed to that deal insofar as Alberta Housing Corporation is concerned?

A I would say both Mr. McColl and Orysiuk. Maybe Mr. Pollard had something to do with it, I don't know, but this net lease basis is a very common type of a lease in warehousing, it's very common.

Q Well, all right, now who drew up, is the lease that was entered into, I'm showing you Exhibit 5?

THE COMMISSIONER: Is that the exhibit?

MR. McLENNAN: Yes, sir.

A I believe it was me, it may not have been.

THE COMMISSIONER: Doesn't it say on the back?

MR. McLENNAN: No, sir.

Q MR. McLENNAN: You don't know whether or not you drew it up?

A I believe I did but I may not have.

Q Do you recall if you charged a fee for drawing it up?

A I would have not charged a fee if I had drawn it up.

THE COMMISSIONER: What's the date of that exhibit?

MR. BODNER: 19th of June, '70. Exhibit number 5.

Q MR. McLENNAN: You wouldn't have charged a fee?

A No sir.

Q Did anybody act for Alberta Housing Corporation, Mr. Achtem, in connection with the lease?

A They subsequently hired a solicitor, he may have been over there at this time or not, I can't recollect. I remember they had Mr. Meunier over there, whether he was their first solicitor or not I don't know.

Q Well did you negotiate the terms of this lease with anyone?

A Yes, sir, I did.

Q Who?

A Mr. McColl and Mr. Orysiuk.

Q They didn't have a solicitor then?

A Not on the negotiations, no.

Q Well the terms of the lease?

A Oh, the terms of the lease, I don't think that was negotiated, it was the standard form lease.

Q It isn't a standard form lease, it's prepared by somebody.

A Basically it's a standard form lease though.

Q Yes, but it isn't a printed form?

A No.

Q Somebody prepared it.

Q But -

A It's a standard form of prepared lease, but it is not the type you go and buy from the stationery company, no.

Q I'm sure you have had experience when you negotiate the terms of a lease between a landlord and a tenant.

THE COMMISSIONER: Before you draw the document.

A Before you draw the document, yes.

Q MR. McLENNAN: Did you have any such negotiations with anybody?

A They were more or less set out in that letter of intent.

Q But that letter of intent, which is Exhibit 40, is addressed to you. "Please prepare lease for Alberta Housing Corporation."

A Normally the lessor does prepare the lease, usually in almost all cases.

Q Yes, but this is "Please prepare lease for Alberta Housing Corporation", which would be the lessee, would it not?

A Yes. I was the lessor and I prepared the lease, I presume.

Q You were also the solicitor for the Alberta Housing Corporation at that time, weren't you?

A Not on this, I wasn't.

Q Mr. McColl and Mr. Orysiuk and Mr. Pollard and Mr. Hetherington didn't regard you as the Alberta Housing Corporation solicitor?

A No.

THE COMMISSIONER: We have evidence, Mr. McLennan, that Clements and Company were solicitors for the Alberta Housing Corporation.

MR. McLENNAN: That's true.

Q MR. McLENNAN: You didn't deal with any solicitor in connection with this transaction, Mr. Achtem?

A I didn't. I presume I prepared the lease and I presented it to them, and I received back an executed copy.

THE COMMISSIONER: On the 19th of June when the agreement was entered into, had you obtained an Offer to Purchase other than this option?

A The Offer to Purchase, no, I had not.

THE COMMISSIONER: You had not got the title?

A No, sir.

Q MR. McLENNAN: That reminds me, Mr. Achtem, there is a copy of a search in the Alberta Housing Corporation's file in the name of - the search was done on a piece of letterhead from Lieber Koch & Achtem. It indicates the state of the title is owned by Overhead Door Sales Edmonton Limited with a mortgage on it. Do you know how come that document would be in the Corporation's files?

A This is certainly my handwriting. I presume I gave it to them.

Q No idea when that was prepared?

A I don't have the date of the search on it. It's got "Outstanding taxes 1970." I presume it was made in the year 1970. I don't know exactly when in 1970.

Q It had to be made before you bought it because it's in the name of the previous owner.

A Yes, sir.

Q You don't have any idea of why that would be in the Alberta Housing Corporation's files?

A No, sir, other than I must have given it to them.

Q Now you commenced to receive rent?

THE COMMISSIONER: Before you obtained title to this property, I gather that the lease was entered into?

A The lease would have been entered into after I obtained title.

THE COMMISSIONER: But you never did obtain title, did you?

A I obtained title after the letter of intent was signed by the Alberta Housing. This was a search prior to all this.

MR. McLENNAN: It was a search that was done prior to Mr. Achtem taking title.

THE COMMISSIONER: Did he obtain title to the property before or after the agreement to lease? In other words, if he had not got the agreement to lease, he would not have taken title. That's what I'm trying to find out.

MR. McLENNAN: Yes, sir.

Q MR. McLENNAN: I am showing you, Mr. Achtem, a Xerox search of a Certificate of Title in your name.

A Dated June 22nd.

Q 1970.

A Yes, sir.

Q That was the date on which you registered the documents that made you the registered owner of the property?

A Yes, sir.

MR. McLENNAN: Perhaps that ought to be marked, sir.

THE CLERK: Exhibit 41.

XEROX COPY OF SEARCH OF CERTIFICATE OF TITLE MARKED EXHIBIT 41.

3-LL-4
E. P. Achtem - Examined by Mr. McLennan

Q MR. McLENNAN: You commenced to get rent pursuant to the lease, Mr. Achtem, on the 1st day of July?

A Yes, sir.

Q Mr. Achtem, what next happened in connection with this lease?

A They subsequently moved into the warehouse. I recall them making complaints about the back of the property. The pitch or the slope at the back yard was of such a nature that when it would rain water would - the drain inclined towards the building and water would go in, and the yard was quite broken up because there had been quite a lot of trucks in the back. They wanted me to improve the grade or pitch and generally fix the back yard up.

Q Is that after they moved in?

A Yes, I believe this would be about in October.

Q Something happened before that, didn't it? Did Mr. Orysiuk call you in and say that he wanted to buy it?

A Oh yes. I received a call from Mr. Orysiuk - I don't recall the exact date but it would be before this date I guess, before October - saying, "Would you come in and see me." I went in and saw him. He advised me that he had been talking to the minister, Mr. Colborne. Mr. Colborne felt that they had done enough business with me. They would like to own the property and to buy it back if possible at my cost. He further indicated to me that he would like - Mr. Colborne told him that they would like to make local improvements to the property and they certainly couldn't if they didn't own it.

Q Yes?

A I wasn't too happy about it. Like I said, well, I was rather upset about it. I said I didn't see why I had to do that.

THE COMMISSIONER: Why did you do it? I cannot understand that. This was a deal you had, it was a good lease deal. Why did you just give it to them for nothing?

A It does seem unusual, sir. What happened was I was quite irritated about it, and Mr. Orysiuk says, "Fine. Do as you want. We can't compel you to do anything." At this point I felt I had both Mr. Orysiuk and Mr. McColl in an embarrassing position. I looked on them as friends. They subsequently both became good friends of mine. I had been out socially with Mr. McColl and his wife, Mr. Orysiuk and his wife, and my wife. This was after we had become very good friends. And I felt I had put them in an embarrassing position.

THE COMMISSIONER: What was embarrassing?

A The minister said they had done enough business with me and they wanted the building back.

THE COMMISSIONER: How would that embarrass them?

A Well, the minister was complaining to them saying they had done enough business with me. I was quite irate about it. I was not yelling or anything but I was upset and I said at that meeting, "Look it, that's the way you want it, I will transfer it to you or I will sell it to you." I said, "Bear in mind my cost wasn't $65,000. I incurred other costs."

THE COMMISSIONER: How much did you buy it for?

A 65,000.

THE COMMISSIONER: I thought this was changed. The

original offer was sixty-three thousand five and there was a counter and subsequently approved by myself for 65,000.

Q MR. McLENNAN: Did you receive the original of this letter, Mr. Achtem?

A I assume I did, sir.

Q Do you recall it?

A I received it.

Q You don't have it?

A No, I don't, sir.

MR. McLENNAN: Might that be marked, sir.

This is a letter to Lieber Koch and Achtem, Attention Mr. Achtem. "Re Warehouse. Further to our recent discussions regarding the above -"

THE COMMISSIONER: Who is it from?

MR. McLENNAN: From Mr. Orysiuk.

"Further to our recent discussions regarding the above, I wish to confirm our desire to acquire the warehouse in question at a cost equivalent to the purchase price which you initially negotiated.

It would also be appreciated if you could effect the necessary legal work for the transfer of the property and assignment of mortgage and bill us for this accordingly."

THE COMMISSIONER: What is the date of that?

MR. McLENNAN: October 13th, sir.

THE CLERK: Exhibit 42.

COPY OF LETTER DATED OCTOBER 13TH, MARKED EXHIBIT 42.

Q MR. McLENNAN: Now by the time you received that you had already your discussion with Mr. Orysiuk?

A I presume I did. I must have.

Q And did you subsequently do the legal work to transfer it to Alberta Housing Corporation?

A I prepared the transfer, I sent it over to them but I certainly did not bill them for it.

Q Why not? They asked you to.

A I didn't. I didn't feel it proper to bill them.

Q Why?

A I just didn't. You may find that I did, but I am positive I didn't. I feel in my own mind I didn't bill them.

Q I just wonder why. He invited you to bill them.

A I just didn't.

THE COMMISSIONER: That's the kind of answer I get from my wife - just because. Don't ask any more questions.

A That's about the only answer I can give, sir.

Q MR. McLENNAN: What price did you sell it back to the Corporation for?

A At the time I talked to Mr. Orysiuk I guesstimated my expenses at $69,000. I was figuring it out in my head when I was sitting down with him, when I agreed to sell it to him. The figures in my mind as I was guesstimating them came to 68 or $69,000. Then and there I said, "You can have it for $69,000, which I subsequently sold it to them for. That was my cost.

THE COMMISSIONER: You had some rent in the meantime, had you?

A Yes, sir.

Q MR. McLENNAN: How did you arrive at $69,000? They wanted it back at your cost, did they not?

A Yes, sir.

Q And you agreed to sell it back to them at your cost?

A Yes, sir.

THE COMMISSIONER: When?

A At the time I guesstimated it at 69,000. I did work out something with Mr. Redmond. If I could get the list to refresh my mind from it.

I got two items, monies received and expenses. Rental received was -

Q MR. McLENNAN: Just a minute, Mr. Achtem. When did you prepare this document that you are now looking at?

A This was prepared recently.

Q What I would like to know is how did you arrive at $69,000? That's what you sold it to Alberta Housing Corporation for.

A Yes.

Q How did you arrive at that number in 1970?

A The figures were fairly fresh in my mind at that time, and I gave them a guesstimate figure, which would have been quite accurate.

Q Can you tell me how the arithmetic gets from 65,000 to 69,000. If you can't remember now, that's fine.

A I can't remember now.

Q All right.

A I would like to deal with this further if I might.

3-LL-9
E. P. Achtem - Examined by Mr. McLennan

Q Well, have you any notes made at the time as to how you arrived at this?

A There would have been mortgage adjustment figures.

Q Have you any notes now that you made then, that you used then?

A I don't.

Q And you attempted to recently reconstruct how you arrived at 69,000, have you?

A Correct.

Q All right, go ahead.

A The two items listed here, monies received and the other item expenses. And the monies received there would be a rental of $4,842 paid me. On the sale of the warehouse back to the Corporation I received a cheque from them for $7,464, showing the total monies received of $12,306.

THE COMMISSIONER: Besides the 69,000, you started at 65,000.

A I bought it for 65,000 and I sold it back to them for 69,000.

THE COMMISSIONER: The accounting is $4,000 difference, is there?

A Yes, sir. That is what I am trying to show it here.

THE COMMISSIONER: I just don't understand what you are talking about.

Q MR. McLENNAN: Mr. Achtem, you have prepared a statement of receipts and expenditures?

A Yes, sir.

Q And it indicates that you received $4,842 in rents?

A Yes, sir.

Q During the period that you owned the warehouse?

A Yes, sir.

Q And that you received a net sum of $7,464 in the sale?

A From the Corporation, yes, sir.

Q And the $7,464 is the gross purchase price less the encumbrances?

A The mortgage, yes, sir.

Q Plus or minus adjustments, I presume?

A I don't believe there were any adjustments. I agreed to sell it to them for 69,000. I don't have a copy of my correspondence with the Corporation. The sale price figure to the Corporation was 69,000 flat.

Q Well now, how did you arrive at $7,464?

A Well, I would get a mortgage statement from the mortgage company -

Q Don't tell me what you would do. How did you arrive at this number here?

A Just subtracting that from the balance owing on the mortgage.

Q Was that what you did to arrive at that number?

A That's the cheque I received from the Corporation.

Q $7,464?

A Yes, sir.

Q Was there a statement of sale and adjustments done in connection with this?

A I believe there must have been.

Q You don't have a file on this?

A No, but if I can find it I will certainly show it to you.

Q I presume you have looked for the file and can't find it?

A It could still turn up.

Q Have you looked for it?

A Yes.

Q You can't find it?

A No, I can't.

Q So your total income was $12,306?

A Yes, sir.

Q THE COMMISSIONER: Who placed the mortgage on it? Did you place the mortgage or did the previous owner place the mortgage?

A I placed the mortgage.

THE COMMISSIONER: And the company was going to buy it subject to the mortgage?

A They bought it with the mortgage on, yes, sir. They took it over as was.

Q MR. McLENNAN: Would you advise the inquiry then, Mr. Achtem, as to the nature of the various items under expenses?

A There's a deposit of $3,000 paid to Knowlton Realty on the Offer to Purchase Agreement. There's an adjustment of $1,888. This would reflect legal fees I paid to the mortgage company - disbursements. The mortgage disbursement fees $1,888. I paid interest on the mortgage to the mortgage company of $3,340. I had a fire insurance policy on the building for $131. I paid taxes on the property for $1,308. I paid Mr. Kolbuc for his assistance at an agreed price of $1,000. I paid the survey company to do a survey on the property, for mortgages purposes, of $40. There was excavation and gravel expenses which the

Corporation wanted done once they were in the building. I referred to that earlier. I believe they got Apex to do it. They billed me $122 for excavating and for gravel $92. I know there are a few other expenses but I was unable to locate them for fixing up the back, so I did not put them in here. I couldn't find them. There was a mortgage payment I made initially of $682. That shows a total expense for me of 11,603 in relation to my receipts of 12,306, showing a net gain to me of $703. This does not include any time I spent. I spent a lot of my own time around there, manually working in the back. The back yard was quite messed up. I spent a lot of my own time in there. I am not counting that.

Q Did you provide a list of expenses to the Alberta Housing Corporation?

A At the time I sold the warehouse back to them?

Q Yes.

A I don't believe I did. They said at my cost. My costs were much more fresher in my mind at the time.

Q I am showing you another set of costs.

A Yes, these are set up on a different basis than here. These are set up on an accounting basis. These are just figures that I had.

Q The costs I am showing you, the list of costs I am showing you, were they provided by you to Mr. Pollard?

A I see they were.

Q Do you recall doing it? I don't want you to rely on Mr. Pollard's letter. Do you recall giving Mr. Pollard a list of your

expenses?

A This is Mr. Pollard's letter to me but I don't - I could have very easily.

Q If you did you were providing $1,500 for your time?

A I put a lot of time on it. Mr. Kolbuc I paid him $1,000 for his time.

Q Did you advise Mr. Pollard you wanted $1500 for your time?

A If it is there I must have.

Q What was Mr. Kolbuc's fee for?

A I gave him $1,000 - well, first of all he's a friend of mine, he spent a lot of time with me looking at the warehouses, and we looked at a lot of them.

Q He was in the real estate business at the time?

A Yes, he's a land appraiser.

THE COMMISSIONER: You don't pay fees to people because they are friends. You pay these people for services, don't you?

A For services given by a friend, yes, sir.

THE COMMISSIONER: By a friend?

A Yes, sir.

THE COMMISSIONER: You make a difference in what you pay them if they are friends or not?

A He is a good friend of mine.

THE COMMISSIONER: A good friend. And you would pay him more?

A I gave him what he asked me.

Q MR. McLENNAN: I'm just not sure what he did for you. That's all.

A He spent a lot of time with me. We spent I would say three weekends together driving back and forth in the northwest industrial area, going through listing of properties, going through the properties physically, measuring them. We spent numerous lunch hours together, going out and looking at the properties. This would be over at least a three week period, I would say two to three week period.

THE COMMISSIONER: When did you pay him that thousand?

A In 1970, sir.

THE COMMISSIONER: I know that. The date though?

A I believe it was July of 1970. I could get the exact date for you.

THE COMMISSIONER: I don't want the exact date. I want to know whether it was before or after you made the sale to Alberta Housing.

A Before, most definitely before.

MR. McLENNAN: I think those are all the questions I have on that subject, sir.

THE COMMISSIONER: I think your timing is very good. It is one o'clock. We will continue tomorrow morning.

(The hearing was adjourned at 1:00 p.m.)

C A N A D A)
PROVINCE OF ALBERTA)
TO WIT:)

IN THE MATTER OF THE PUBLIC INQUIRIES ACT AND THE ALBERTA HOUSING CORPORATION

The Honourable Mr. Justice J. M. Cairns — Commissioner.

R. A. McLennan, Esq., Q.C., — Commission Counsel.

G. A. C. Steer, Esq., Q.C., — For R. B. Orysiuk.

J. E. Redmond, Esq., Q.C., — For E. P. Achtem.

H. A. Bodner, Esq., Q.C., — For Alberta Housing Corporation.

E. D. Stack, Esq., Q.C., — For Gateway Building Supplies.

A. T. Murray, Esq., — For William Weir.

W. A. Stevenson, Esq., and A. H. Lefever, Esq., — For D. McColl.

DATE: May 23, 1974.

HELD AT: Edmonton, Alberta.

VOLUME 8

(Pages 714 - 803)

Supreme Court Reporters
EDMONTON - ALBERTA

I N D E X

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MAY 23, 1974

WITNESSES:

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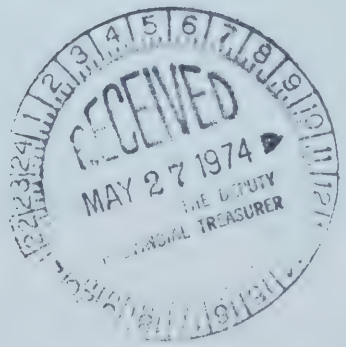
Examination by Mr. McLennan 801
Examination by Mr. Redmond 802



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1-LL-1

PROCEEDINGS before The Honourable Mr. Justice J. M. Cairns, at Courtroom 17, The Law Courts, in the City of Edmonton, Province of Alberta, commencing at 9:48 a.m., Thursday, May 23rd, A.D. 1974.

THE COMMISSIONER: Mr. McLennan?

MR. McLENNAN: My Lord, Mr. Redmond advises me he is not yet in a position to arrive at a position with regard to whether or not he will take, on behalf of Mr. Achtem, a claim of privilege, and he is waiting for some further information in that regard; and I would suggest we leave that till the adjournment and thereafter I would propose to call Mr. Jones and ask for the Court's ruling.

THE COMMISSIONER: I am not a Court.

MR. McLENNAN: I am sorry, the Commission, sir.

MR. REDMOND: One piece of information that I thought that I would have by this morning I have not got. I may be able to get it by adjournment time. If I can, I am then in a position to properly advise my client.

THE COMMISSIONER: It may be a legal point, Mr. Redmond, as to whether you have any privilege at all now, having given the evidence himself.

MR. REDMOND: Yes, sir. On the other hand, however, having given it in a compellable situation. I don't want to argue that at this time.

THE COMMISSIONER: I don't want that either.

MR. REDMOND: I don't know that we want to make any claim yet. I feel in fairness to my client I have to have all

the facts, and there's one fact that I don't have here, sir, but I hope I can get it. I thought I had arranged to interview the person concerned and get the information this morning, but I was not able to. It may be that I can contact him over the adjournment.

THE COMMISSIONER: We don't want to hold the witness here. I understand that the witness is here.

MR. REDMOND: I think he is, sir, yes. We don't want to hold him unduly either, but I have to advise my client properly and I don't feel I am in that position yet.

THE COMMISSIONER: I think the witness must go back later in the day where he came from.

MR. REDMOND: That's why I'm going to try if I can -

THE COMMISSIONER: If you want some time we will adjourn to complete what you need.

MR. REDMOND: I'm not sure what time I can contact this particular person but I think perhaps a good a time as any would be during the morning adjournment. I could find out now if you wish.

THE COMMISSIONER: We will leave it till the morning adjournment.

MR. REDMOND: Thank you, sir.

EDWARD PETER ACHTEM, on former oath, examined by Mr. McLennan:

Q You acknowledge you are still under oath, Mr. Achtem?

A Yes, I do.

Q The proceeds of the commissions you earned from assembling the

land in Mill Woods were paid to you over a five-year term?

A I object to answer on the grounds previously stated. Yes, sir.

Q Did you receive this in January of each year?

A I object to answer the question on the grounds previously stated.

THE COMMISSIONER: What conceivable thing is he claiming privilege here, Mr. Redmond?

MR. REDMOND: I did not advise him to make this claim, sir. I think he is anticipating what may possibly come.

THE COMMISSIONER: When it comes, that seems to be the time to make it. There is evidence showing -

A Yes, I did. You are asking did I receive the payment in January of each year?

MR. McLENNAN: Yes.

A I believe the first one I received in the month of February or March. Other than that I received in January.

Q So you would have received the last one in January, 1974 of this year?

A Yes, sir.

Q Have you disbursed the trust portion of that to Mr. Orysiuk?

A I object to answer the question on the grounds previously stated. No, I have not, sir.

THE COMMISSIONER: Does that apply to 1974 or all years?

MR. McLENNAN: That was just 1974.

Q MR. McLENNAN: Where were these funds kept, Mr. Achtem? Where is Mr. Orysiuk's share now?

MR. REDMOND: Are you asking about 1974?

MR. McLENNAN: Yes. The portion he didn't give him for this year.

A I object to answer the question on the grounds previously stated. At the Royal Bank on Jasper Avenue and 100 Street.

Q Are they in your joint account, that is the account of B. Robert Orysiuk or Edward Achtem?

A I object to answer the question on the grounds previously stated. In my account, sir.

THE COMMISSIONER: I am not sure about this but there was some evidence given this was a joint account. Mr. Orysiuk gave that evidence.

MR. McLENNAN: Mr. Achtem, I think, is referring to a different bank account.

THE COMMISSIONER: Oh, I am sorry.

A I object to answer the question on the grounds previously stated. Yes, I am, sir. They are two different Royal Banks. This bank I am referring to now is on Jasper Avenue and 100 Street, sir, McCauley Plaza.

Q MR. McLENNAN: What account is that, Mr. Achtem?

A I object to answer the question on the grounds previously stated. It was my own account.

Q Is it your firm account or trust account or is it another account again?

A I object to answer the question on the grounds previously stated. My own general account.

Q That is the account you operate your firm -

A I object to answer the question on the grounds previously stated. No, it is not, sir, just my own personal account.

Q Was it a trust account?

A I object to answer the question on the grounds previously stated. No, it was not, sir. It's just my own general account, not my business account.

THE COMMISSIONER: Your legal affairs account?

A No, sir, it is just my general account.

MR. BODNER: He said it was his personal account.

THE COMMISSIONER: He has given evidence before his firm is personal. I was wondering if it was mixed up with his own firm. He has a firm of his own. It may not be Lieber & Koch.

A I object to answer on the grounds previously stated. It is not with my firm; it is my own personal account, sir.

THE COMMISSIONER: What is in there other than these monies to which Mr. Orysiuk is entitled?

A I object to answer the question on the grounds previously stated. No, sir, just those funds.

THE COMMISSIONER: This is an account for that purpose. It is not an account mixed up with his personal monies.

Q MR. McLENNAN: The only purpose of this account is to hold the funds you received from the Alberta Housing Corporation?

A I object to answer the question on the grounds previously stated. Half those funds are mine which I have been using, the balance I am not -

Q You are leaving?

A I object to answer the question on the grounds previously stated. Yes, sir.

Q Are you the only signing authority on that account?

A I object to answer the question on the grounds previously stated. It is a P.C.A. account. I believe my wife has signing authority as well as myself.

Q How long has that account been maintained for that purpose?

A I object to answer the question on the grounds previously stated. This was a P.C.A. account opened up -

THE COMMISSIONER: What kind of an account was it?

A Personal chequing account, opened up at the beginning of January 1974.

Q MR. McLENNAN: And from what account prior to 1974 did you receive and disburse the funds that you received from Alberta Housing Corporation?

A I object to answer the question on the grounds previously stated. The Canadian Imperial Bank of Commerce which has now been located at 124th Street and 103rd Avenue, and subsequently thereafter from the National Trust Company here up town.

Q When did that account move to the National Trust?

A I object to answer the question on the grounds previously stated. I believe it was 1972.

THE COMMISSIONER: I have not got the accounts clear. Maybe it is clear on the record but I am not. I know what the situation is now. Are you going back?

MR. McLENNAN: Yes, sir. I will clear that up.

Q MR. McLENNAN: In the beginning, that is the monies you would receive in 1970, you deposited to the Canadian Imperial Bank of Commerce which was then located on 124th Street and 103rd Avenue?

A I object to answer the question on the grounds previously stated. Yes, sir.

Q You did that in 1971 again, and can you remember whether you did that in 1972?

A I object to answer the question on the grounds previously stated. I don't know. That possibly could have been the National Trust Company.

Q So you then used an account with National Trust from 1972 and in 1973?

A I object to answer the question on the grounds previously stated. I believe I just used the National Trust account for the one year, which I believe was 1972.

Q All right. Then in 1973 what account did you use?

A I object to answer the question on the grounds previously stated. I believe it was the account at the Canadian Imperial Bank of Commerce previously described. I believe it is that account.

Q And then, 1974, the Royal Bank?

A I object to answering that question on the grounds previously stated. Yes, sir.

THE COMMISSIONER: I wonder if I could ask you something when you get a cheque for this commission probably from the corporation, I understand that you would deposit the cheque in one of these accounts and then you would take your own part out naturally. What were the mechanics; how did Mr. Orysiuk get his money?

A I object to answering the question on the ground previously stated. I would put the money into my account which I considered a trust account.

THE COMMISSIONER: Yes.

A A personal trust account and I would pay him from that account, sir. And I would take my monies from that account also.

THE COMMISSIONER: And that would clean out that account at that time of the monies that came in?

A I object to answering that question on the ground previously stated. Yes, sir.

THE COMMISSIONER: I suppose there would be legal fees or something that Mr. Orysiuk had nothing to do with. Or maybe they didn't come into that account. I don't know.

A I object to answering on the grounds previously stated. No, they did not come into that account, sir.

Q MR. McLENNAN: Well, Mr. Achtem, when you received the monies you didn't disburse promptly Mr. Orysiuk's half, is that true?

A I'm sorry?

Q You didn't promptly disburse to Mr. Orysiuk his half?

A I object to answering on the grounds previously stated. I would issue a cheque to him whenever he requested money.

Q He drew on those funds as he required them?

A I object to answering on the grounds previously stated. Yes, sir.

Q Sometimes two thousand, sometimes twelve, sometimes five?

A I object to answering on the grounds previously stated. Yes, sir.

THE COMMISSIONER: I thought there was some evidence that gave, given by Mr. Orysiuk that he had a chequing right on that account. It was a joint account in which he and Mr. Achtem both had chequing privileges.

MR. McLENNAN: That is another account; I'll deal with that right now, sir.

Q MR. McLENNAN: Mr. Achtem, you opened an account at the Royal Bank of Canada main branch, were both you and Mr. Orysiuk were signing officers?

A I object to answering on the grounds previously stated. Yes, sir.

Q And Mr. Orysiuk has testified that all the deposits to that account were made by you and all of the withdrawals on that account were made by him. Does that coincide with your memory?

A I object to answering that question on the grounds previously stated. I believe that would be the case.

Q What was the purpose of opening that account? That was opened

Q (Cont.) by the way in 1971 was it not?

A I object to answering on the grounds previously stated. I do not recall, but that would likely be the year.

Q What was the purpose of opening that account?

A I object to answering on the grounds previously stated. The initial purpose of opening that account; we had intentions of undertaking a few developments or projects.

THE COMMISSIONER: Were the monies deposited in that account taken from these other accounts?

A I object to answering on the grounds previously stated, yes, sir.

Q MR. McLENNAN: How did you keep track of these funds; that is how did you know when Mr. Orysiuk had drawn his half?

A I object to answering on the grounds previously stated. I would have kept a record for the year.

Q All right, now, that account we have just discussed, the Royal Bank account, main branch, in which you and Mr. Orysiuk - was a joint account?

A I object to answering that question on the grounds previously stated. Yes, sir.

Q And that was opened with the idea that the two of you were going to engage in some land venture?

A I object to answering that question on the grounds previously stated. Yes, sir, that was our initial intention.

Q But that never came to fruition?

A I object to answering on the grounds previously stated. No.

Q But you continued to deposit funds to that account throughout the year 1971?

A I object to answering that question on the grounds previously stated. I was not - I don't think it was throughout the full year of 1971 I think we deposited for part of the year 1971, if it was 1971.

Q Now, is there some reason why you, upon receipt of these funds, you just wouldn't write a single cheque to Mr. Orysiuk for half?

A I object to answering on the grounds previously stated. No reason, other than when he would ask me for some funds I would give him whatever he requested because I considered them as trust funds; half being his and half being mine.

Q Yes, but he had his own bank account or bank accounts?

A I object to answering that question on the grounds previously stated. I would assume he would have.

Q Well, why wouldn't you write him a cheque for his half and let him act as his own banker instead of you acting?

A I object to answering the question on the ground previously stated. Because I would give him whatever he would ask me for.

Q That must have been to some degree a nuisance, Mr. Achtem. Why wouldn't you just cut it in half and give him his half?

A I object to answering that question on the grounds previously stated. I knew Mr. Orysiuk well; I seen him quite frequently. So I couldn't say there was any inconvenience.

Q Okay; you built an apartment block with Mr. Orysiuk in 1971?

A Yes, sir.

Q And the corporate vehicle used to build that block was Robco Investments Limited?

A Yes.

Q And the shareholders of Robco Investments Limited are shown as Mr. Orysiuk and his wife?

A Yes, sir.

Q And you incorporated that company?

A Yes, I did, sir.

Q And in fact the shareholders are not Mr. Orysiuk and his wife but you and Mr. Orysiuk?

A Yes, sir.

Q Why was that done, Mr. Achtem?

A The only reason it was done, Mr. Orysiuk felt that he knew good money lenders, mortgage lenders. He advised me that he knew the mortgage manager.

THE COMMISSIONER: I am sorry you will have to speak up.

A I'm sorry.

THE COMMISSIONER: Speak up.

A Oh, I am sorry. He advised me that he was well acquainted with the mortgage manager from Montreal Trust; I believe that is the mortgage company that put the mortgage on his house. He advised me that he had some discussions with the manager. I believe the manager's name was Mr. Lucas and that he would be able should he undertake an apartment or project to get a good mortgage. I believe he was advised that personal guarantees

A (Cont.) would be required. I did not know Mr. Lucas; if personal guarantees would be required one would have to - it is customary to set up a limited company with the officers thereof giving personal guarantees.

THE COMMISSIONER: Yes, but one of them was the wife was going to give a guarantee?

A Yes, sir.

THE COMMISSIONER: Not you?

A Well, I didn't know these people from Montreal Trust.

THE COMMISSIONER: You didn't appear in the mortgage, the transaction with the mortgage company at all. It was personal guarantees of the wife and Mr. Orysiuk himself?

A Yes; I don't know if Mrs. Orysiuk ever gave a guarantee.

THE COMMISSIONER: No.

A I think Mr. Orysiuk only give a guarantee. Maybe Mrs. Orysiuk did, I don't know, on the mortgage loan.

Q MR. McLENNAN: I'm sorry, I didn't follow that. Why didn't you appear as a shareholder in that company; because you didn't want to give a personal guarantee?

A No, Mr. Orysiuk stated that he felt he could get a good mortgage loan through Montreal Trust and I didn't know the mortgage officers for Montreal Trust, like he knew them. I would have had telephone conversations with them over the years in the course of my practice but I didn't know the mortgage officers over there. He seemed to be a very close friend or associate with the, I believe with Mr. Lucas the mortgage manager. So he was going to qualify for the mortgage.

A (Cont.) I bought the land or I put the deposit down for the property.

Q MR. McLENNAN: Are you suggesting that you didn't appear as a shareholder because your appearance there might jeopardize Montreal Trust granting a mortgage for the property?

A I don't think it would jeopardize it but he apparently had talked to Mr. Lucas and Mr. Lucas indicated he was prepared to give Mr. Orysiuk a favourable mortgage if he did decide to undertake the building. But it wasn't to - it had nothing to do with me keeping my name purposely out of the picture.

Q Well, if it had nothing to do with you keeping your name purposely out of the picture why did you keep your name purposely out of the picture is what I am wondering; and you weren't a bankrupt or a bad credit risk or anything that would jeopardize the mortgage.

THE COMMISSIONER: He was a good credit risk at that time.

A I still consider myself a good credit risk now, sir.

THE COMMISSIONER: You probably are now too, yes.

A. Nothing deceitful or deceptive was implied other than the explanation I have given you, sir. He knew Mr. Lucas; I did not know Mr. Lucas and he was going to give him a good mortgage. So I wasn't going to interfere. It is as simple as that.

Q I was just wondering why would you think that you surfacing would constitute an interference to a loan?

A I wouldn't have but again by not surfacing I certainly didn't constitute a detriment to getting a loan.

THE COMMISSIONER: Some times it is easier to go in the back door than go in the front door for no reason at all.

Q MR. McLENNAN: In any event you did construct an apartment block through the vehicle of Robco Investments Limited?

A Yes, sir.

Q Does that corporation still own that apartment block?

A Yes, it does, sir.

Q And did the equity money to build that apartment block come from the commissions you earned from Alberta Housing Corporation?

A I object to answering on the grounds previously stated. I believe a small portion of it did.

Q Did Mr. Orysiuk's equity come from the portion of the commissions that you were going to pay him?

A I'm sorry?

Q Did Mr. Orysiuk's contribution to equity come from the portion of your commissions that you were going to pay him?

A I object to answering that question on the grounds previously stated. I believe some of the funds could have come from that portion. I might elaborate, the bulk of the funds came from the mortgage I believe it was $187,000.00 mortgage.

Q Yes, I'm talking about the equity though, the cash that was necessary over and above mortgaging and the Canadian Imperial Bank of Commerce loan. The equity money you had to put up to buy the land and get the thing going before you got a mortgage.

A Yes, sir.

Q That came from the commissions that you earned from Alberta Housing Corporation?

A I object to answering that question on the grounds previously stated. Some of it would have; also a large portion would have come from rentals; the building was completed. Before mortgage payments became due and owing the rentals would have applied towards the construction too.

Q Well, all right; other than revenues generated by the building itself, the equity money that you had to put up came from the commissions you earned from Alberta Housing Corporation; that is both your portion of the equity and Mr. Orysiuk's portion?

A I object to answering that question on the grounds previously stated. I presume some of Mr. Orysiuk's equity came from those funds. As far as I was concerned some of mine, most of it came from those funds and from my other personal funds.

Q All right, but at that time Mr. Orysiuk didn't have any other personal funds, did he?

A I object to answering the question on the grounds previously stated. That I can't answer, sir.

Q Now, just to return a minute --

THE COMMISSIONER: Before you leave that, what happened to this Bank of Commerce loan. Wasn't a loan made, $50,000.00?

A Yes, sir.

THE COMMISSIONER: Isn't that what you are talking about?

Q MR. McLENNAN: I think it is still in force, isn't

Q (Cont.) it, Mr. Achtem?

A Yes, it is, sir.

MR. McLENNAN: It is still outstanding, sir.

THE COMMISSIONER: That was in addition to the money they put in themselves?

A And the mortgage, sir, yes, sir.

THE COMMISSIONER: Was there some security for that?

A The loan at the bank?

THE COMMISSIONER: Yes?

A Our personal signatures; we had to sign.

THE COMMISSIONER: That's not secured on the property?

A I don't believe it is, sir.

Q MR. McLENNAN: Mr. Achtem, just to return for a minute to the transaction whereby you acquired the Samis, Breitkreuz, Bohaychuk parcel of land --

A Yes, sir.

Q -- I am advised this morning that Mr. Pollard and Mr. McColl negotiated with Mr. Samis both at the Alberta Housing Corporation office and then later at the Commercial Realty office and that a deal had pretty well been made between Mr. Samis, Mr. McColl and Mr. Pollard and then the transaction was turned over to you?

A I object to answering on the grounds previously stated. As I related yesterday the way it had been described to me, Mr. Samis was on a fishing expedition to find out what was going on in the area. He considered his land of great value. I

A (Cont.) know figures as high as $6,000.00 an acre were mentioned by Mr. Samis. Five and six thousand dollars an acre. It was subsequently bought for considerably less than that.

Q My question is whether or not Mr. Pollard and Mr. McColl negotiated with Mr. Samis?

A I object to answer on the grounds previously stated, they had discussions, I do not believe any sale was consummated or agreed to, figures could have very possibly been mentioned, I wasn't present at those discussions, sir.

Q Well were you advised that, did you draw up this offer on Commercial Realty paper?

A Mr. Samis, I object to answer on the grounds previously stated, Mr. Samis, one of the principals in this particular piece of land was a realter with Commercial Realty, I believe that's his handwriting.

Q Or did you complete any portion of this document?

A I signed it, I object to answer the question on the grounds previously stated, I signed as purchaser, sir.

Q Other than signing it as purchaser did you negotiate the $656,000 price?

A Yes I did, sir.

Q Where?

A At Mr., I believe I concluded it at Mr. Samis' office on, I believe it's a Saturday morning.

Q And was anyone present besides you and Mr. Samis?

A I believe it was me and Mr. Samis and maybe Mr. McColl was there, I can't recollect, I see he signed as a witness.

Q Mr. McColl was the Assistant Executive Director of the Alberta Housing Corporation?

A Yes, sir.

Q Well you don't know about this negotiation that had been conducted between Samis on the one hand and Mr. McColl and Mr. Pollard on the other?

A I think I described it, sir, earlier, I believe it was a fishing expedition. I know Mr. Samis very well, he is a very competent land man and he is going to get every dollar he can get out of there. He was looking out of getting considerably more than he subsequently signed for.

Q I'm just wondering, Mr. Achtem, if you know whether or not Mr. McColl and Mr. Pollard sat down and negotiated on these two occasions with Mr. Samis?

A I recall that they were together with him on one occasion.

THE COMMISSIONER: That was the time when you were there in the office?

A Yes, sir.

THE COMMISSIONER: Well then what Mr. McLennan is asking is, did they not continue their negotiations, that's all I think he's asking.

A They did not, sir, I continued the negotiations.

Q MR. McLENNAN: All right.

A And I might point out that it was far from complete when I did continue the negotiations.

Q This is just what I am advised, Mr. Achtem, that is why I am asking you.

A Yes, sir, I'm trying to give you my answers as best I am able, sir.

Q Now, did you have any other, or have you had any other business dealings with Mr. Orysiuk other than the --

THE COMMISSIONER: Just before we leave that one point, Mr. McLennan, I wanted a statement just for my own information, you were paid a commission in respect of this. What was the amount?

MR. McLENNAN: 656,000.

A That was $32,000, sir.

THE COMMISSIONER: Pardon?

A $32,000 commission.

THE COMMISSIONER: You were paid that, that was on your usual 5 per cent basis?

A Yes, sir.

Q MR. McLENNAN: Mr. Achtem, other than Robco Investments Limited and its construction of an apartment block, and other than the agreement to share your commission, have you had or do you now have any other business dealings of any kind with Mr. Orysiuk?

A I'll take them in chronological order, there weren't that many. I believe the first one would be the fourplex that Mr. Orysiuk mentioned, that was located on, the exact address I don't know, but it was on 81st Avenue and I believe 105, approximately 10572 - 81st Avenue. That could be the address but --

THE COMMISSIONER: Is this something you have been talking about before?

A It was mentioned by Mr. Orysiuk earlier, sir.

MR. McLENNAN: A fourplex on the south side of Edmonton.

A We sold that at a loss, I don't think we even had it a year. Mr. Orysiuk stated he thought we had it a year, I believe we had it for less than that, there were structural damages to the roof, serious structural damages to the roof. Water was leaking in causing quite a bit of damage and we did sell it at a loss.

After that there would have been, Mr. Orysiuk referred to some property at Fort Saskatchewan, if I might clarify that.

THE COMMISSIONER: What date was this other fourplex deal?

A I believe that would be about 1971, sir.

The property that Mr. Orysiuk mentioned at Fort Saskatchewan was a parcel of land I optioned up through Krebs Realty at Fort Saskatchewan myself. I advised Mr. Orysiuk if he was successful in helping me syndicate that that I would be prepared to give him one-half of the net earnings. That was, he thought he could be successful in assisting me, he must have forgot about it at that stage because he never did help me syndicate it. I ended up syndicating it myself with assistance of other parties, friends of mine, and they shared in the profit of that, Mr. Orysiuk had no interest or equity in that property at all.

There was a commercial site mentioned

A (continued) at Stony Plain, Alberta, I believe it's 2.5 acres of land, more or less, as Mr. Orysiuk related, he, Mr. Decker Kulak and myself each have an equal interest in that. We placed a deposit on it of approximately, I believe it's $1500 apiece, give or take a hundred dollars, that's our investment in that and we bought it for, hoping to undertake a development on that. Other than that, that's my only business relationship with Mr. Orysiuk.

THE COMMISSIONER: Other than the other apartment building?

A Yes, sir.

Q MR. McLENNAN: And there are no other transactions in which you were involved either personally or as a shareholder of a corporation with Mr. Orysiuk whereby he would earn or expect to earn any remuneration at all?

A Definitely not.

Q All right. Did you know anything about a shopping centre site in Devon?

A Yes I did, sir.

Q What do you know about that?

THE COMMISSIONER: I'd like to get the dates, Mr. McLennan. Fort Saskatchewan matter didn't turn out to be anything?

MR. McLENNAN: Yes, it turned out to be something but Mr. Orysiuk didn't participate in it.

THE COMMISSIONER: That's right, but what date was that?

A Sir, that would be in 1973, approximately April of 1973 that

A (continued) the option was picked up and it was subsequently syndicated in the summer of '73.

THE COMMISSIONER: Now the Stony Plain, 2.5 acres, when was that?

A That would be October of '73, sir.

THE COMMISSIONER: Excuse me interrupting but I just wanted to get, were these people dealing together or not in 1973. That is perhaps outside our scope.

Q MR. McLENNAN: Did you have any other dealings, Mr. Achtem, either directly or as a shareholder of a corporation with Alberta Housing Corporation, other than the legal fees that you earned and the commission you earned?

A I did not, sir.

Q And --

THE COMMISSIONER: Well of course, because he had the dealing over the warehouse.

Q MR. McLENNAN: Yes, well he's told us about that, sir.

A Yes I have, sir.

Q Other than the warehouse?

A That's it.

Q Mr. Achtem, the Devon Shopping Centre, you tried to acquire a piece of land in Devon for that purpose, a shopping centre site?

A I can give my explanation of that. I do have a sub-office at Stony Plain, which is in very close proximity to Devon. They are communities, sir, close together both in the west of

A (continued) Edmonton. I have an equity option with Mr. Orysiuk and Mr. Kulak in this Stony Plain site, I knew generally what was going on at Devon, there was no big secret about this commercial site at Devon. There were other people that expressed interest in that property. I subsequently, with no prodding on, or suggestion from Mr. Orysiuk to go ahead and do anything on the property, I went out there with my father, inquiries were made as to what the price of the property was, there was a five acre parcel of land. I made a submission, offered the Town a certain price, $1600 -- at a price of $16,000 per acre. After my submission they sent me a letter back about three weeks later saying they appreciated my interest but unfortunately my price was not in line. They suggested a much higher price. I did not even send them a letter in return.

Q All right, well in any event your --

A Mr. Orysiuk did not breach any trust.

THE COMMISSIONER: Pardon?

A If there is suggestion that Mr. Orysiuk breached any trust in telling me about these properties, I deny that.

Q MR. McLENNAN: That is that he didn't tell you?

A I had discussed it with him but he didn't breach trust by saying here's a commercial site of five acres, why don't you go out there and work on it, he did not, I worked on that with my father. There was other people that had made inquiries about that commercial piece of land.

Q Well did Mr. Orysiuk, before you went out there, discuss it with you at all, Mr. Achtem?

A I had discussions with him on that, we had a joint piece of property at Stony Plain.

Q Well you had discussions with him about a shopping centre site in Devon?

A I discussed that with him, yes I did.

Q Before you went out to Devon?

A No, I'd been out to Devon before that.

Q No, before you went out to make inquiries as to whether or not you could buy the site?

A I'm sorry, I'm not following you there.

Q Before you went out to Devon with your father to determine whether or not you could buy the site in Devon, you had discussions with Mr. Orysiuk about the Devon situation?

A It could have been mentioned, it most likely was, yes.

Q Okay, now in the course of your Mill Woods employment by the Alberta Housing Corporation, you came across some lands that were available for sale that you subsequently acquired?

A Yes, sir.

Q And could you advise the Inquiry as to what lands they were?

A Yes, sir. The first parcel would have been a parcel of land owned by a Mr. Fedor, I believe, a Mr. S. Fedor. He contacted me I believe it was in February of 1970 asking me if there is, I might possibly be interested in this parcel of land. I said I didn't know. I asked him to give me the description, where it's at, he did. I said I would let him know. I believe I

A (continued) went back to him shortly thereafter and obtained an offer to purchase the property, I believe it would be a quarter section of land. After I obtained the option to purchase I brought it into Alberta Housing Corporation, I showed it to both Mr. Orysiuk and Mr. McColl.

THE COMMISSIONER: You got an option on it?

A An offer to purchase, sir, not an option. An offer to purchase. I showed --

THE COMMISSIONER: It was your offer?

A I beg your pardon?

THE COMMISSIONER: You prepared an offer to purchase?

A Yes I did, sir. I showed it to both Mr. Orysiuk and Mr. McColl, whether they were together or not again I don't recall, but I showed it to both of them as I best recollect. I was advised after they looked at it, they looked at the municipal map, they said it's out of the area, we do not want it. My next comment to one of them, or both of them was, the price is very favourable and the terms are good. The reply was, we aren't interested, it's out of the area.

I subsequently had discussions with Mr. Doug Matheson, in the course of the conversation I had with him I showed him the offer to purchase, he subsequently sold this property jointly for both of us.

THE COMMISSIONER: Who did, Matheson?

A Yes, sir.

THE COMMISSIONER: You hadn't bought it yet.

A I beg your pardon?

THE COMMISSIONER: You hadn't bought it yet.

A I had it under an offer to purchase, sir.

THE COMMISSIONER: I don't understand, what is an offer to purchase?

A An offer to purchase --

THE COMMISSIONER: I understand an option but what is an offer to purchase?

A An offer to purchase is basically buying the property, just the formality is just to prepare the transfer or the agreement for sale and register, but an offer to purchase is a binding sale agreement.

Q MR. McLENNAN: In any event, Mr. Achtem, you communicated the availability of this parcel to Alberta Housing Corporation, they advised you they weren't interested, and after that you participated personally?

A Yes sir, they were, in no uncertain terms they didn't want it, I said fellows it's a good price, they didn't want it.

Q And you think you talked to both Mr. Orysiuk and Mr. McColl in that connection as well?

A Yes, sir.

Q Did you write a letter with regard to that?

A To Alberta Housing?

Q Yes, or to the City?

A I don't think so.

Q You did write a letter, a copy which I am showing you dated November 4th, 1969, with regard to two properties?

A Yes. What is the date of that, I'm sorry?

Q November 4th, 1969.

A Yes, sir.

Q And I believe you received advice that the Corporation wasn't interested in either of the two properties referred to in your letter?

A As I recollect, yes sir.

Q But you don't recall writing on these other parcels?

A No sir, I wouldn't have.

2-LL-1
E. P. Achtem - Examined by Mr. McLennan

Q Do you recall talking to Mr. Ellwood of the City whether or not the City wanted parcels bordering the Mill Woods area?

A I didn't talk to him. I may have met the gentleman. Most likely I would know him if I see him. I don't think I discussed it. I would not have discussed it with him, no.

Q And that property just mentioned, did you acquire that in your name?

A The Fedor property?

Q Yes.

A Yes, sir.

Q Not in the name of the company?

A No, sir. I believe you have a copy of the Offer to Purchase or I have. I think we have a copy. It was in my own name.

Q I understood it was Keno Investments.

A No. It would have been in my own name. I believe it's in my name.

Q Is it accurate, $5 as a deposit?

A Yes, sir.

Q On 150,000 purchase price?

A Yes, sir.

Q And before possession date, which was May 1st, 1970, you had resold it?

A I believe so. I cannot remember the exact date but it sounds right.

Q Now, you subsequently acquired another parcel?

A Yes, sir.

Q And that's at the top of the Mill Woods area property owned by

Les Soeurs de Notre Dame de la Croix?

A Yes, sir.

Q And I understand again that it came to your attention those lands were avilable and you pointed that out to Alberta Housing Corporation persons?

A I did not.

THE COMMISSIONER: What is the name of this property?

A I think it's best described as Sisters of Notre Dame.

THE COMMISSIONER: Oh, you were talking in French! That's why I didn't understand.

MR. McLENNAN: Diefenbaker French

Q MR. McLENNAN: This is the property at the top of Exhibit 4?

A Yes, sir.

Q I'm sorry, Mr. Achtem, I was under the impression you also discussed that property with Alberta Housing.

A I had not.

Q When was that acquired?

A That was acquired after I had finished my acquisition as agent for the Corporation. I believe the date would be - I believe an option was acquired in late April of 1970.

Q Do you have the document on this?

MR. REDMOND: Sir, I wonder if I might ask Mr. Achtem a question.

THE COMMISSIONER: Yes.

In April 1970 -

A I was not working as agent in the acquisition, sir.

THE COMMISSIONER: You have finished?

A Yes, sir.

Q MR. McLENNAN: You better tell us something about that, Mr. Achtem. How did that come to your attention, that particular parcel?

A I happened to be up in Mr. Doug Matheson's office around this time in April of 1970. He had his County of Strathcona map before him, before both of us, and we were looking over all the properties. I cannot recollect who first mentioned this one, either I or Mr. Matheson. I presume it could have been me. In the course of our conversation he said, "There's a parcel of land that was not purchased." I had not made any - I never talked to the vendors or anybody who owned it.

Q That was way outside your area?

A Yes, sir, and after the acquisition was public and after I finished my work as an agent. Anyway in the course of our conversation we both mutually agreed that it was -

THE COMMISSIONER: I don't hear what you are saying. You are talking to Mr. McLennan.

A I'm sorry, sir. In the course of our conversation, we both mutually agreed that it was a good piece of property. I had never talked to the owners before. Mr. Matheson, our mutual understanding or consent, he subsequently went out to the Sisters of Notre Dame and was able to negotiate, I believe it was, an option to purchase the property. I did not deal on the property myself other than we were partners in the endeavor.

THE COMMISSIONER Is that the one you were involved with as Keno Investments Limited?

A Keno, yes, - Keno Holdings.

THE COMMISSIONER: Were both of you in Keno Holdings?

A The Fedor property, my equity was held by Keno Holdings Limited. I believe Mr. Matheson's was held by Beaver Ranches, and the same was the situation in this piece of property.

MR.McLENNAN:

Q And Keno Holdings was yourself and your wife?

A Yes, sir.

Q In any event did you communicate - you did not acquire those lands personally, the Sisters' lands?

A No.

Q Mr. Matheson did?

A Yes, sir.

Q And you had no contact with regard to those lands or the availability of those lands or the desirability of those lands while you were acting as agent for the Corporation?

A No, sir, I never had contact.

Q And you still own those lands?

A Yes, sir.

Q With regard to the Fedor lands, what profit did you make on that, Mr. Achtem?

A I think Mr. Matheson and myself on the sale made I believe it was about $21,000 apiece more or less.

Q The Robco Investment Apartment House was built in part by Siemens Construction Limited?

A They did a large portion of the work on it.

Q And Mr. Orysiuk and yourself acted as general contractors?

A Yes, I would say Mr. Orysiuk was more of a general contractor on that one than I was, but I assisted.

Q Who was Siemens Construction Limited?

A Siemens Construction Limited would be Jake Siemens and his wife. I believe that's right.

Q Did you not have an interest in that company?

A It's an unusual situation I know. Once he was in financial difficulty. This goes back - I built an apartment back in '68, '69 with him, my own building. That's when I became associated with the gentleman. He felt - we were friends. I don't know how to describe the arrangement. He wanted me to buy shares in the company. I to all intents and purposes at the end did not become involved in the company. I never made any money in the company. It's just a framing company, small framing company.

THE COMMISSIONER: What are you talking about now?

A Siemens Construction Limited, sir. It's a subcontractor that does basements and wood framing for buildings.

Q MR. McLENNAN: You don't own equity in Siemens, do you?

A No, I don't.

MR. McLENNAN: Thank you.

THE COMMISSIONER: You told us a few minutes ago that on the Samis transaction you were paid your commission on the

purchase price?

A Yes, sir.

Q Were you paid commission on the Mueller transaction?

A Yes.

Q And on the Elmer Preuss also?

A Yes, sir.

THE COMMISSIONER: You paid some of that to Weber Brothers?

A I did not pay them.

MR. REDMOND: Sir, that was the Mill Creek Syndicate. Elmer Preuss was a different property.

THE COMMISSIONER: Oh yes. In any event there was no problem, you got your commission on all these properties?

A Yes, I did, sir.

THE COMMISSIONER: Mr. Steer, do you want to examine? I think we will do the same as with Mr. Orysiuk. The gentleman was examined prior to Mr. Redmond examining in case there's some point he wants to cover.

MR. STEER EXAMINES THE WITNESS:

Q Mr. Achtem, on this Preuss transaction that has been talked about, as I understand it you made an offer to purchase to Mr. Preuss or his agent; is that correct?

A On the Elmer Preuss property I made an offer to purchase on a Check Realty Offer to Purchase form through Mr. Peter Johnson.

Q Is that the usual form of Offer to Purchase that you sign and then there is no contract until such time as the vendor, Mr. Preuss, has signed?

A Yes, sir.

Q What was the problem Mr. Preuss had? Was he having a quarrel with his real estate agent?

A They couldn't stand each other.

THE COMMISSIONER: They were not quarrelling; they just were not friends.

Q MR. STEER: After you made that offer I understand you had some discussion with Mr. Preuss, didn't you? You did go and see Mr. Preuss personally?

A Yes, on a few occasions.

Q The offer was made?

A As per their listing agreement.

Q But to the real estate firm for them to take it to Mr. Preuss to get Mr. Preuss' signature on it, if Mr. Preuss would sign it; is that it?

A Yes, sir.

Q It is just as simple as that?

A Yes, sir.

Q And Mr. Preuss refused to sign?

A Mr. Johnson told me this.

Q Pardon?

A Yes.

Q And Mr. Preuss, you went to talk to him because you wanted to get the land and he told you some things about how the listing was obtained from him, did he?

A Yes, sir.

Q What kind of things did he tell you?

A He told me that - this is Mr. Preuss' version as he told me.

Q I understand that.

A That he was told that the realtor had a buyer from Montreal that was going to come out - I believe it was Montreal - and was buying property or would buy the property. I don't believe he told me much more than that. Anyway he indicated it was misrepresented to him for the purpose of getting that listing agreement.

Q At a suggested price that he was no longer satisfied with?

A Yes, sir.

Q Did you believe Mr. Preuss when he told you this?

A I did not disbelieve him.

Q And did you give any consideration as to whether you could bring an action on this listing that we are talking about?

A I gave serious consideration to that, yes, sir.

Q Now had Mr. Preuss bound himself to sell the land on the listing or just to receive offers and make himself responsible to the real estate company in the event he refused to accept one?

A On the listing agreement, if you do not honour a listing agreement you could be sued for the commissions due and owing.

Q For the commission?

A Yes, sir.

Q That's the usual kind of listing agreement, isn't it?

A Yes, sir.

Q And it is still open to the man who makes the listing to say to his real estate agent, "Sorry, I'm not going to do it," and the real estate agent may say to him, "All right, sir, I am

looking to you for the commission"?

A That's a fair comment.

Q Is this the kind of listing that there was here?

A Yes, sir, in my opinion.

Q That's why you came to the conclusion that you couldn't bring an action against Mr. Preuss?

A Yes, sir.

Q And so the matter was open and had to be done all over again; is that right?

A Yes, sir.

Q And I take it, as you described Mr. Preuss, he was a pretty stubborn individual?

A His brother was living across the road.

Q And the two of them were together?

A I don't think they were too close together.

Q I don't mean close physically. I mean they were acting together in dealing on this land?

A Physically they were close together. One was across the road from the other.

Q Were they trading back and forth information?

A I would presume they did.

Q Was there something important about this piece of property?

A Mr. Elmer Preuss' property?

Q Yes.

A It was within the block of land.

Q I think you mentioned that you thought it was strategic, did you say that?

A To Mr. Preuss?

Q Strategic for the purpose of the development.

A Surely it was strategic.

2-FWB-1
E.P. Achtem - Examined by Mr. Steer

Q With regard to Mill Creek, sir - incidentally, with regard to Mill Creek, you knew some people in that syndicate, eh?

A Yes, sir.

Q And were those Mr. Perry or Mr. Gregg?

A I knew them both.

Q You knew them both?

A Yes, sir.

Q Apparently there were problems in getting that piece of land as well?

A Yes, sir.

Q And you found that out from either one or other of those gentlemen, Gregg or --

A I believe it was Mr. Perry - being uptown in the city center you find out quite a bit. It came to my attention that there was difficulty, Webers were having difficulty.

Q It is pretty easy to pick information up on the street?

A Yes, sir.

Q How did you find out Mr. Corbett represented; did you find that out from Perry or Gregg?

A On my own.

Q You found that out on your own?

A Yes, sir.

Q Just by asking around?

A Yes, sir.

Q And did it then come to you, "Okay, if I can deal with Mr. Corbett; I can probably move this thing along"?

A Yes, sir, I find dealing with lawyers,if you deal with the

A (Cont.) right solicitor, things move along very smoothly. And Mr. Corbett was the type of gentleman, in all my dealings with him in the past and I had had dealings with him, they always moved along very smoothly.

Q I take it that up to this point you hadn't talked to anybody in the housing corporation until you found out who was acting for them, Mr. Corbett, and came to the conclusion yourself that you could probably make arrangements to bring this land transaction off, am I right?

A Yes, sir; I felt competent I could pick it up. Otherwise I wouldn't have acted as I did.

Q Following obtaining such information as you obtained, if I can use the term, "On the street," you then went to the housing corporation because you thought that you could bring the transaction off, am I right?

A Yes, sir.

Q Now, you indicated yesterday that you talked to Mr. Orysiuk and Mr. McColl about it and you said that you convinced them that you could pull the deal off. How did you set about convincing them that you could do it?

A I told them if anybody could pull it off I felt I could.

Q Did you explain to them how you proposed to do it?

A I convinced them that I was positive I could pick it up. I can't remember the overall discussion.

Q You can't remember the conversation?

A No, I can't, sir.

Q But you are the person that was urging them to let you do it,

Q (Cont.) is that correct?

A Yes, sir, and I advised them about, that I understood Weber had been working on it. I had their blessing provided I could settle with Weber and I wanted to do it on an amicable and a gentlemanly basis which I felt I did.

Q Now, in addition to that you said yesterday that Mr. McColl told you how important this piece of land was. Would you explain that?

A Who said it was - I'm sorry?

Q You said yesterday in your evidence that Mr. McColl knew how important this piece of land was. Could you explain that; why was the land important. What did Mr. McColl have to say about it?

A Well, it was - I can't remember the specific discussions on that other than that this piece of property was sitting right in the middle of everything and up high.

Q Would that create a problem then with the development if the land were not obtained?

A Yes, sir.

Q Why, because you would have to build around it?

A Yes, sir.

Q In your view was the price that you got that land for a fair price?

A I would say I got it well under the market value.

Q Did you?

A I would say substantially under the appraised value in my opinion. And I have heard nothing to the converse that I did.

Q What about the Preus land; did you get a good price on that?

A The Elmer Preus land?

Q Yes; the one where the man had a listing and there was a quarrel between him and the real estate agent.

A If you compare it with prices it was basically the same price. If I had got it at fifty-nine thousand four, that would have been about half the price paid for land in that immediate area.

Q It would be a steal for that price?

A Yes, sir.

Q And the Berube land, that is Breitkreuz, Samis --

A The Berube property.

Q Yes, did you know that that land hadn't been acquired until you saw Mr. Samis at the Alberta Housing Corporation?

A I'm sorry?

Q This Breitkreuz, Samis land, did you know that it hadn't been acquired - this is the first time that you knew that the land hadn't been acquired was when you saw Mr. Samis at the housing corporation?

A Yes, sir.

Q Up to that time you didn't know anything about this piece of land whether it had been bought, sold or anything else?

A Yes, sir.

Q And you are going through the housing corporation and they are with Mr. Samis. You knew who he was; he was a friend of your family to start with.

A For years, sir.

Q And you knew he was a dealer in land and you put two and two together and you knew perfectly well he was trying to deal on a piece of land there, to sell a piece of land or fish for it?

A He was fishing; he was fishing for it. He is a very competent land personnel.

Q Did you listen in on the conversation with Mr. Samis?

A No, I didn't, sir.

Q You just passed by and put it away in your mind, is that right?

A That would be a fair description.

THE COMMISSIONER: Pardon?

A Yes, sir, I happened to be passing by when Mr. Samis was there talking to Mr. McColl and Mr. Pollard.

THE COMMISSIONER: You knew what he was talking about to Mr. McColl. You weren't just passing by the door either. I gathered you were in the office when Samis was there.

A I don't believe I was in the office. I believe.

THE COMMISSIONER: Oh, I don't care, in the corridor wherever it was.

A Yes, sir.

THE COMMISSIONER: I gathered, now, I may be wrong, let me get clear - excuse me, Mr. Steer. My understanding of the matter was that Mr. McColl and Mr. Orysiuk and yourself were in the office and Samis was there also. Samis was there raising the question about this land, fishing if you like.

A Yes, sir; it was Mr. McColl, Mr. Pollard and Mr. Samis in the office when I came by, yes, sir. And I found out that he was there inquiring about his property.

THE COMMISSIONER: Well, he said so, didn't he. You were there when he was talking about this to these gentlemen?

A I came on the scene; they had been talking to him when I came on the scene.

Q Did you hear him talking to them; that's what I'm trying to find out. Or did you just figure he was doing something because he was in the office?

A I found out after the discussion why he was there.

Q You weren't in there when the discussion was being held about this --

A No.

THE COMMISSIONER: -- about the fishing trip?

A I wasn't, sir.

THE COMMISSIONER: I am sorry, Mr. Steer.

Q MR. STEER: So the situation is this you saw Samis there; you knew who Samis was; you went back and saw Mr. McColl afterwards and you found out at that time about this piece of property and that Mr. Samis had been, as you say, fishing?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q Did you learn where the land was at that time from Mr. McColl?

A I believe I did, sir.

Q Did you indicate to Mr. McColl that Mr. Samis was a family friend?

A I don't know if I elaborated on that. Again I knew Samis and

A (Cont.) I felt competent once I found he had the property in the area, knowing his personality, that he is a difficult man to deal with. He is a good businessman. I felt I could communicate very good with him; as good as anybody if not better in my opinion.

Q Did you have this kind of discussion with Mr. McColl at this time about knowing Samis?

A I advised that I felt able. I advised of my capabilities I felt I could pick that property up if possible.

Q This is what you told McColl after you came back, when you came back after Samis had left, is that right?

A Words to that effect, yes.

Q What did Mr. McColl say to that when you indicated you thought you could get the property?

A Well, I was still agent for acquiring properties and I was never told to stay out of this area we had described as the north area. I had no knowledge that he had ever talked to Weber Brothers. As a matter of fact I think Mr. Samis was, he was with Commercial Realty a much smaller realty company.

Q Did you indicate to Mr. McColl that you were going to talk to him, to Mr. Samis?

A I indicated to him I would like to be able to talk to him, yes.

Q Then what happened?

A Then I met with Mr. Samis.

Q Did Mr. McColl reply when you said you would like to talk to Samis?

A I believe so.

Q What did he say?

A Go ahead or words to that effect. He certainly didn't say, don't go ahead.

Q Now, when you were talking to Mr. McColl after you had seen Mr. Samis there --

A Yes.

Q -- did Mr. McColl indicate any price that Mr. Samis had been throwing out as it were?

A We had discussed price.

Q Who had had that discussion about price, Mr. McColl?

A Mr. McColl was a very competent land man; he would know prices.

Q And Mr. McColl then discussed with you what he thought the land, this Breitkreuz land would be worth per acre?

A I would think so, yes, sir.

THE COMMISSIONER: Well, did he not discuss it --

A Yes, sir.

THE COMMISSIONER: -- let's not discuss what might have happened, should have happened.

A He would have given me a price, yes, sir.

Q MR. STEER: Now, really what I asked you and I think it is appropriate to ask you again, did Mr. McColl indicate to you what Mr. Samis was saying as far as price per acre was concerned?

A He indicated he was looking for the moon.

Q He was looking for the moon?

A Something like that.

Q When you started talking to Mr. Samis what price did Mr. Samis

Q (Cont.) start at?

A I believe the figure was around $6,000.00.

Q Per?

A Acre.

Q What did you finish up getting it for, Mr. Achtem?

A I haven't seen the agreement but as I recollect I believe, I recollect it was $4,100.00 an acre. Why I recall that it was written up on the Commercial Realty form, with whom Mr. Samis was with and if this deal was going to go through he wanted to be sure he got some form of commission at his end; otherwise there would be no deal.

Q As far as you were concerned, did you get Mr. Samis down just as far as you could get him?

A Could never get him any lower than that.

THE COMMISSIONER: Was this forty-one hundred, was that the figure?

MR. STEER: Forty-one hundred per acre is the witness' memory, sir.

Q MR. STEER: It was purchased for that amount of money?

A I never figured that out I believe it was.

Q Do you want to look at this document?

A If I could. Sir, it comes out exactly to $4,100.00 an acre. There is 160 acres purchased for six hundred --

Q Was any of that negotiation done in Mr. McColl's presence your negotiation with Mr. Samis?

A I believe some of it was.

Q In other words it occurred at the Alberta Housing Corporation office?

A There, yes; whether he was with me at the Commercial Realty office; I believe that is where the deal was subsequently consummated, I cannot recollect but he might have been with me there also; I don't remember.

Q I notice that he witnessed the document?

A Yes, he did, sir.

Q Now, the Mueller property.

A Yes.

Q After you got that option the copy of the option that Mr. Simpson and Mr. Melvyn had, was there a three way discussion between you and Mr. Orysiuk and Mr. McColl with regard to how you were going to deal with that problem?

A Yes, there was, sir.

Q And was the object to try and come up with the lowest price that you thought that you could offer that would get the land from Mr. Simpson and Mr. Melvyn?

A If we couldn't buy this property at a realistic market figure I was not to buy it.

Q You weren't going to buy it?

A I was not to buy it.

Q Were those the instructions you had from the corporation?

A Yes, sir.

Q Now, with regard to the warehouse you told us that you found out about that by being at the corporation and sitting down

Q (Cont.) with a number of gentlemen who worked there and then you found out they were looking for a warehouse?

A Yes, sir.

Q This was over a cup of coffee in one of the offices?

A Yes, sir.

Q At that time did you talk to them about what kind of a warehouse they wanted?

A I wasn't being overly probing; I had been invited in for a coffee.

THE COMMISSIONER: He always had his ear open for deals.

A That's a fair comment, sir.

Q MR. STEER: And you found it out; you found it out by sitting down and talking to these men?

A Yes, sir.

Q I'm just trying to find out how much information you got if you can recall?

A The area.

Q Yes?

A I believe that they were looking for warehousing in the immediate future, right now.

Q Yes, they wanted it right away?

A Other than that I can't recall.

Q I see.

THE COMMISSIONER: You mean area do you mean square feet or the area where it would be?

A Northwest.

THE COMMISSIONER: That's what you meant by area you'd want to find out about footage too, wouldn't you?

A Yes, sir.

Q MR. STEER: There's only one other thing I want to ask you. You told us that Mr. Hetherington was out perhaps with some other people trying to or looking at this warehouse on behalf of the corporation to make an assessment as to whether it was suitable or not?

A They asked me to go out and look at it.

Q Pardon?

A They requested me to go out and show it to them.

Q And you took Mr. Hetherington out?

A And I believe another gentleman too.

Q And another gentleman?

A Yes, sir.

Q And that warehouse is on 135350 - 114th Avenue?

A Yes, sir.

Q Now, is this the gentleman you took out there in, a Mr. R.L. Hetherington whose name appears at the top there?

A Yes, Ross or Ron as I recollect, Hetherington.

Q All right, he apparently here is making a report to Mr. McColl with regard to a trip he took with you and whoever else it was out to the warehouse?

A I haven't read the letter.

Q No, but you have never seen it so I am not going to ask you. I just want to ask you something about it though. I notice that in his report he's saying that the kind of lease that

Q (Cont.) you wanted was a 10 year lease. Do you remember discussing 10 years with him at any time and then subsequently it being reduced to 8?

A Could very likely have been done.

THE COMMISSIONER: No, it was the other way around. I think it was 5 years.

MR. STEER: This is why I asked, sir. It is - it seems to be a different situation.

MR. REDMOND: I think the evidence, sir, is 5 years in a 5 year option.

THE COMMISSIONER: Option to renew?

MR. REDMOND: Yes.

MR. STEER: And this document, sir, indicates 10 years reduced to 8. Those are all the questions I have, sir.

(Court adjourned.)

MR. McLENNAN: Mr. Jones.

MR. REDMOND: Sir, I didn't think we were through with Mr. Achtem.

MR. McLENNAN: Yes, I'm sorry, sir.

THE COMMISSIONER: We're not through with Mr. Achtem but we are going to examine Mr. Jones in view of the fact I take it he wants to get back to Toronto, and thought we might cut in. Would you sooner, are you going to be long with Mr. Achtem?

MR. REDMOND: No I won't be long, I have a couple of questions, or a few questions.

THE COMMISSIONER: Well, if you can do it so we can dispose of Mr. Jones, Mr. Jones I'm sure won't be more than ten minutes.

MR. REDMOND: Sir, my situation is this. I still have not been able to make contact with the person I said I needed to speak to in order to advise Mr. Achtem as to whether or not a claim should be made that Mr. Jones' evidence is privileged. I have made every effort possible to try to make that communication so that I can advise me client. I have been unable to do so and it's information I need in order to make the decision properly. So I'd like to have an opportunity to do that and advise my client before we take any position on that.

THE COMMISSIONER: Well that's going to make it a little awkward.

MR. REDMOND: Well sir, I'm sorry if it's

MR. REDMOND: (continued) inconveniencing Mr. Jones or the Commission. I apologize for that but it is important.

THE COMMISSIONER: Well you should have known, you probably have known or suspected Mr. McLennan was calling another witness.

MR. REDMOND: I had no doubt that Mr. Jones would be called at some stage, but I didn't know until yesterday he'd be here today.

THE COMMISSIONER: But we have been talking about it for a day or two to make up your mind whether this is privileged.

MR. REDMOND: Yes sir, and as soon as I began looking into it I concluded that there is some information that I needed to have in order to make that decision and I can't get that information. I have tried and I hope I will be able to but I haven't been able to yet.

THE COMMISSIONER: When can you get it?

MR. REDMOND: As soon as I can contact the person I need to speak to.

THE COMMISSIONER: That's pretty indefinite, is the person you want to see in town?

MR. REDMOND: Yes sir, I spoke to him once this morning but there is some more information I find I need to get from him so, I know he is in the city, he wasn't in his office this morning but I caught him at home, but I haven't been able to get him back again on the telephone.

THE COMMISSIONER: Well what you are suggesting then is that we can't bring this matter until tomorrow?

MR. REDMOND: Until I can make contact with him.

THE COMMISSIONER: Well you can't make contact when you are supposed to be here.

MR. REDMOND: No sir, I have messages out to have him call the Court House and have the Orderly come and get me if he calls, but that's the best I can do.

THE COMMISSIONER: You make get a call in a short time. The only thing is I don't want to inconvenience Mr. Jones, I'm sure he has to get back to his --

MR. REDMOND: No sir, I appreciate that but this is an important matter and I think my client should be properly advised.

THE COMMISSIONER: Well, I think it probably is an important matter.

Well, Mr. McLennan, what have you got to say about that?

MR. McLENNAN: Well, it is an important matter, I agree with my friend. I would have thought it was sufficiently important that they'd be in a position to know --

THE COMMISSIONER: That is what I was suggesting to him, that probably we talked about it a day or so ago.

MR. McLENNAN: I'm quite prepared to go ahead and make a submission to the Commission on the basis of the law and ask you to make a ruling, sir. I take it that Mr. Redmond's position is not that he is unable at the present time to make a submission with regard to whether or not the evidence is compellable, the position is he wishes further

MR. McLENNAN: (continued) information as to appreciate whether or not he should waive the privilege or claim it, I take it.

MR. REDMOND: That's right.

THE COMMISSIONER: Well he doesn't have to argue whether it's compellable or not if he decides to waive the privilege, the point doesn't arise. If he decides that the evidence is too damaging to his client he may take any steps he likes, that's the way I look at it because there's no reason why he wouldn't waive it unless it is bad evidence and he thinks it will be.

MR. McLENNAN: The point is I think, sir, that if you are prepared to make a ruling on the basis of my submission then it doesn't matter much whether Mr. Redmond wants to waive the privilege or not. If it turns out that there is in fact no privilege, which is what my submission will be, that there is no privilege that would attach to this.

THE COMMISSIONER: Mr. Redmond doesn't want to argue this.

MR. REDMOND: Well, sir, it seems a little bit silly to get into what might be a long legal argument and a difficult one about whether or not it's privileged, until we decide whether to claim the privilege if there is one.

THE COMMISSIONER: Well, that's the point, it's no good facing that unless we have to. The problem is, Mr. McLennan, probably you might consult Mr. Jones and see whether he can stay or not. He may say he's got engagements in Toronto, I don't know.

MR. McLENNAN: He has reservations on a 3:30 airplane, sir.

Well perhaps we can take five minutes and I will see if I can assist Mr. Redmond and I will also speak to Mr. Jones.

THE COMMISSIONER: Well all right. We should dispose of it now, I don't mind hearing the argument, you can be sure. If you have any argument I can dispose of it.

(A short recess was held.)

3-LL-1

(12:15 p.m. the Hearing resumes.)

THE COMMISSIONER: Mr. Redmond, have you advanced at all?

MR. REDMOND: I'm afraid not. I still haven't been able to communicate with the person I want to talk to.

THE COMMISSIONER: We are in an awkward position, aren't we?

MR. REDMOND: Yes, sir, we are.

THE COMMISSIONER: I understand Mr. Jones has an engagement in New York tomorrow and I certainly don't want to be in a position where it has to be broken. It seems unreasonable as far as we are concerned. Here is a man who has voluntarily come here. True he is under subpoena now but that does not matter. He came voluntarily and it is very decent of him to do it. He has a busy practice, as I understand, and I don't think we should be pushing people like that around.

MR. REDMOND: I quite appreciate that. I had no intention of trying to inconvenience Mr. Jones. We are all, sir, engaged in a busy practice, and none of us like to waste time.

THE COMMISSIONER: But we happen to live here.

MR. REDMOND: My problem, sir, is I just cannot advise my client properly just what he should do until I have had the information I am trying to get. Now, I did make every effort to get it before we started this morning but I was unable to do so. I don't like to give him advice, to claim privilege, unless the information I get suggests to me that is the proper course of action to take. I would rather advise him when I have all the facts.

3-LL-2

THE COMMISSIONER: On the other hand we have to inconvenience the witness.

MR. REDMOND: Well, sir, we are not going to finish today in any event. Presumably there will be a day when he is not in New York and there will be a day when there is an airplane available.

THE COMMISSIONER: Yes, I suppose that you will be prepared to pay the cost of bringing him back.

MR. REDMOND: I did not ask him to come here, sir.

THE COMMISSIONER: Well, you are the only one who is inconveniencing him. I take it you are not?

MR. REDMOND: Not prepared to pay?

THE COMMISSIONER: Yes.

MR. REDMOND: Not personally, sir.

THE COMMISSIONER: I don't mean personally, of course not personally. You are on the other end of that.

MR. REDMOND: Hopefully.

THE COMMISSIONER: It's stupid of me if I thought you were. Suppose we - this will have to be with the agreement of counsel, Mr. Steer and Mr. Stevenson - suppose we adjourn till one o'clock and we can sort of have lunch in that time, all except you. And then you can either decide to waive the privilege if you want to or say you would not want to, and we can hear argument as to whether we can hear him anyway or not.

MR. REDMOND: Very good, sir.

THE COMMISSIONER: Would that be satisfactory to you, Mr. Steer?

MR. STEER: Yes, sir.

THE COMMISSIONER: I don't like to inconvenience the other members of the bar.

MR. STEER: No inconvenience at all, sir.

THE COMMISSIONER: We might sit then till 2 o'clock instead of one. Very well, we will adjourn till one o'clock.

(12:20 p.m. the Hearing adjourns.)

THE COMMISSIONER: What is your position, Mr. Redmond?

MR. REDMOND: My position is still the same. I have been unable to communicate with the gentleman I wished to talk to and I so therefore don't have the information I need in order to advise my client properly.

THE COMMISSIONER: Well, I think we will the discuss the question of whether or not it can be made waiving the privilege.

MR. REDMOND: Sir, I don't want to be put in a position where I am forced to advise my client on that matter as to whether he should volunteer. So until I have all the information --

THE COMMISSIONER: I understand your position you have had lots of time to get the information you require to advise your client. We had talked about it for several days. I think we have come to the time now where we have got to decide whether it is either privilege or not.

MR. REDMOND: Sir, with respect, my position is that I haven't had what has turned out to be sufficient time. I certainly made all the efforts I could make. I was told yesterday that Mr. Jones was coming here today. I have made all reasonable efforts to get the information I am seeking. In the normal circumstances I would have expected to have no difficulty whatever in making the inquiry I want to make. The circumstances as to why I can't make the inquiry are most unusual and I don't think that I could have been expected to have anticipated the difficulties that I have run into. But

3-FWB-2
General Discussion
F.D. Jones - Examined by Mr. McLennan

MR. REDMOND: (Cont.) as a result of that difficulty I don't have certain information I need in order to advise my client.

THE COMMISSIONER: Well, all we have to ascertain now is whether your client has a privilege.

MR. REDMOND: Well, I'm prepared to deal with that question.

THE COMMISSIONER: All right, we'll call Mr. Jones and get to the point where there is some problem.

FRANK DOUGLAS JONES, sworn, examined by Mr. McLennan:

THE COMMISSIONER: Well, Mr. McLennan will you proceed with the examination. There are certain preliminary matters of course that there can't be any objection.

MR. McLENNAN: Yes, sir.

Q MR. McLENNAN: Mr. Jones, you are a member of the Law Society of the Province of Alberta?

A I am.

Q And you have a specialty with regard to tax law, sir?

A I do.

Q In the years 1969 and 1970 you were a Professor at the Law Faculty at the university here in Edmonton?

A I was.

Q THE COMMISSIONER: What years?

MR. McLENNAN: 1969 and 1970.

Q MR. McLENNAN: And you are now practicing in Toronto, sir?

A Yes.

3-FWB-3
F.D. Jones - Examined by Mr. McLennan

Q Now, you had occasion in 1969 to give advice to Mr. Edward Achtem?

A I did.

Q And can you tell me how many interviews there were preceding that advice?

A As I recall there were perhaps three.

Q And during that period, 1969, would that have been in 1969?

A As I recall, yes, in the fall of 1969.

Q Is there any way for you to fix the dates of those meetings?

A Yes, I was away in Eastern Canada the whole of the summer of that year and as I recall Mr. Achtem asked my advice after classes had commenced at the university which would place it roughly the middle of September.

Q I see, at that time were you restricting your practice at all?

A Yes, I restricted my practice entirely to matters of taxation.

Q Did you advise in any other field of law?

A I did not.

Q Now, Mr. Achtem has testified before this inquiry that he instructed you that he was to receive a commission from the Alberta Housing Corporation - just let me finish my question Mr. Redmond and don't answer it Mr. Jones - that he was to receive a commission from the Alberta Housing Corporation; that he had received those instructions from one Robert Orysiuk who was the executive director of the Alberta Housing Corporation and that he had subsequently agreed to share this commission with Mr. Orysiuk and, just before you - my question to you, Mr. Jones, is did you receive that information from

Q (Cont.) Mr. Achtem? Don't answer it.

THE COMMISSIONER: Just a minute there's another matter that advice was sought on as I understand, Mr. McLennan, and that was whether he could take that over a period of 5 years rather than the year he had performed the work.

MR. McLENNAN: Yes, sir; there are several other items other than the one I have mentioned but I think this raises the question of the privilege as well as those other matters, sir. So that we can at this point --

THE COMMISSIONER: What we want to find out I take it is whether you discussed those matters or whether it was the taxation matter you discussed.

MR. McLENNAN: Yes, sir, I think the question I asked might very well raise the question of privilege that we will have to resolve before we go into any of those other matters.

MR. REDMOND: Yes, sir, certainly the question that has been asked does raise the question of privilege. Mr. Achtem has not yet at this inquiry said that he waives that privilege which I have not yet advised him as to whether he should waive it or whether he should not waive it. And I take the position that I need certain information before I can give him that advice; that I have made reasonable efforts to get the information and that my client's position should not be prejudiced in order to meet the convenience of a witness who happens to want to be someplace else tomorrow.

THE COMMISSIONER: I understand that is your position all right. But Mr. Achtem has placed these facts related by Mr. McLennan and other facts before the Court and says he got advice from Mr. Jones in respect of it and Mr. Jones advised him it was quite satisfactory to do what he intended to do. We all know that; that's all on the record there's nothing hidden about that.

MR. REDMOND: Sir, I would point out --

THE COMMISSIONER: Now, the privilege, as far as privilege is concerned, Mr. Redmond, once the witness, Achtem, who is claiming the privilege has thrown the matter wide open by saying, "Here is what I told my solicitor," certain facts and he gave the advice on those facts. Surely there can be no privilege; once it is laid open by the witness himself.

MR. REDMOND: That might well be true in a situation where someone voluntarily comes in and volunteers information of that sort. But the fact is that is not what happened in this case. If Your Lordship examines the transcript you will see that what happened was, that as to the communications that passed between Mr. Achtem and Mr. Jones, those communications were only given by Mr. Achtem in response to questions put to him by counsel to this commission. Now, this commission has the power to make Mr. Achtem come here. He came here. This commission had the power to compel him to answer questions in the witness box. I submit, sir, that in that situation Mr. Achtem hasn't volunteered anything and therefore he is not in the situation of someone who says in

MR. REDMOND: (Cont.) effect, by his conduct or by his words, "I am volunteering to tell you what I discussed with my solicitor; what I told him and what he told me."

THE COMMISSIONER: He didn't volunteer anything; I agree with you but he was under oath and he made certain statements as to the information he gave to his solicitor.

MR. REDMOND: In response to counsel's questions.

THE COMMISSIONER: And Mr. Steer's client confirmed certain of those statements. He said that he was doubtful as to whether he could take, could split this commission or not or get a kickback or whatever you like to call it. And he told Mr. Achtem that he had better find out about that. As a result of that Mr. Achtem says he consulted Mr. Jones and he came back to Mr. Orysiuk and that's what he says. On that basis - and told him that he had taken advice from Mr. Jones and here is what it was. So we have that before us.

MR. STEER: My memory of the precise chronology --

THE COMMISSIONER: Well, I'm talking generally about it.

MR. STEER: Very well, sir, but I do remember just slightly different from Your Lordship.

THE COMMISSIONER: Well, there is another thing started that; there had been some discussion apparently about splitting this commission. And Mr. Achtem's wife at breakfast one morning was concerned about it when he told her about it that this wouldn't be proper, as was Mr. Orysiuk. He was concerned about it. And the wife was concerned about it. And

THE COMMISSIONER: (Cont.) as a result of that pressure by these two individuals Mr. Achtem consulted Mr. Jones.

MR. REDMOND: Sir, the situation I am in is this; I haven't advised Mr. Achtem whether the privilege should be claimed or not. I am asking the commission not to put me in the position where I have to do that until I have certain facts. I simply ask the commission to defer that problem until I can properly get the facts. Now, I appreciate that may cause Mr. Jones some inconvenience; it may cause the commission some inconvenience, but it appears to me sir that we are not going to finish apart from Mr. Jones today and we are not going to finish tomorrow. It does appear that we will be around for a while. I presume there will be some time in the future when Mr. Jones can come again. Your Lordship suggested this morning that if that happened perhaps my client would pay the plane fare. I don't know that --

THE COMMISSIONER: Well,there's more than plane fare; you can't take a man from a busy practice and give him plane fare.

MR. REDMOND: Well, sir, I would take the view that there is absolutely no legal obligation on him to do that but he tells me he's prepared to do it if directed to do so.

THE COMMISSIONER: Well, the matter is squarely before me now. Have you anything to say about it, Mr. Steer?

MR. STEER: No, sir.

THE COMMISSIONER: You are just sitting behind; you just took the advice that was given to your client or your

THE COMMISSIONER: (Cont.) client took it.

MR. STEER: My client had no contact, sir.

THE COMMISSIONER: That's right, none at all.

MR. STEER: On the sidelines.

THE COMMISSIONER: Well, in my opinion and there is no doubt about my opinion at all, that once this evidence has been given by Mr. Achtem himself, then that can be checked up by asking the solicitor if that advice was given. It is an entirely different case where the ordinary solicitor/client privilege arises, such as the advice given by a solicitor to an ordinary client. In this case it was advice which has already been opened up in these proceedings. And I see no reason why it can't be checked out by asking the witness if he got certain facts and if he gave certain opinions which - it goes to the question of credibility if nothing else.

MR. REDMOND: Sir, my submission in that regard is this, and that is, that the law is clear that communications between a solicitor and his client are privileged.

THE COMMISSIONER: That's true, they are privileged in the first instance, Mr. Redmond, but once the client tells the whole story then of course there isn't any privilege any more. He hastold the story and surely it can be checked up as to whether he told the correct story or not.

MR. REDMOND: That of course would put a client in an impossible position. If he can be called before an inquiry of this sort and be compelled under the threat of procedures the commission can follow if he doesn't answer the

MR. REDMOND: (Cont.) questions, if he can be compelled to answer the questions and then be said to have waived the privilege by answering under compulsion questions that are asked of him, that means that before an inquiry commission a person has no such solicitor/client privilege.

THE COMMISSIONER: He is the man himself that raised the question of the advice that he took.

MR. REDMOND: If you look at the transcript, sir, I think you will see it was answered in response to questions from commission counsel. Sir, I think I should make my position clear. There is another problem I have got as well; if Mr. Jones does give evidence today I need certain information before I can cross-examine, as well as before I can make the decision as to whether we ought to have claimed privilege or not. And I can't get that information either; I am not in a position properly to cross-examine him today. Now, I would ask you, sir, if I'm going to be put in a position where I have to do it I would have to ask you to excuse me as counsel for Mr. Achtem at this inquiry, because I can't conduct his case.

THE COMMISSIONER: Well, I have no objection to excusing you if you don't want to stay here and look after your interests, the interests of your client, you don't have to.

MR. REDMOND: Sir, I can't look after my client's interests if I am forced into that position.

THE COMMISSIONER: Well, that's the sort of stuff you

THE COMMISSIONER: (Cont.) hear in the police court.

MR. REDMOND: No, sir, that is a fact, sir. I am in the position where I need to talk to someone before I can either give that advice or before I can cross-examine Mr. Jones. I would like to have the opportunity to ask that question.

THE COMMISSIONER: Well, as far as I am concerned Mr. Jones can give his evidence. There is no - the privilege does not now exist. Now then, if an adjournment is asked for that is another matter.

MR. REDMOND: Sir, I --

THE COMMISSIONER: Well, I make that ruling anyway.

MR. REDMOND: Sir, it is my submission that there is absolutely no authority for the proposition that a witness before an inquiry of this sort who is compellable and who is asked a question to which he responds has thereby waived anything. Waiver is a voluntary act; it is not an act done under compulsion.

THE COMMISSIONER: Well, I understand that, I understand your argument. My view is the opposite.

MR. REDMOND: Well, sir, my situation is this; we haven't yet claimed the privilege. I would ask that the taking of Mr. Jones' evidence be adjourned until I have the opportunity to interview the person I need to.

THE COMMISSIONER: I don't see the basis for that. Mr. Jones has been brought here. He can't be here tomorrow when we might get down to this. There's no reason to believe

THE COMMISSIONER: (Cont.) that you can make up your mind on this tomorrow or any other day. We have had several days to do it in. I see no reason why Mr. Jones can't be asked the questions. If you are in a position that you can't cross-examine him after you have heard his evidence - his evidence may be all in favour of your client; I know nothing about it, as to what it will be. I think you can make that application then and we can see whether there is anything to it.

MR. REDMOND: Sir, perhaps I should outline the facts to you a little bit more clearly so that you know what I am saying. I would --

THE COMMISSIONER: I think I --

MR. REDMOND: Like not --

THE COMMISSIONER: I think I understand what you're saying.

MR. REDMOND: Sir, the facts are simply this that Mr. Jones was interviewed about this matter some time ago and I wasn't counsel at that time. I would simply like to find out what happened, that's all.

THE COMMISSIONER: Well,you were going to find out what happened from Mr. Jones. He will tell you exactly what happened, I'm sure. He is entirely reputable; there's no reason why his evidence should be doubted.

MR. REDMOND: Well, sir, I think simply this, that I ought to be in a position to have the facts before I am forced to deal with the witness, that's all.

THE COMMISSIONER: Well, why don't you hear his evidence and then see whether the evidence requires cross-examination. It may be, it may confirm exactly what you are trying to say.

MR. REDMOND: If it doesn't, sir, then I am in the position where --

THE COMMISSIONER: If it doesn't then you can make an application.

MR. REDMOND: No, sir, I don't see the difference because if I do that then we'll end up having to adjourn presumably anyway.

THE COMMISSIONER: Maybe.

MR. REDMOND: And we'll have to bring him back anyway.

THE COMMISSIONER: Could be.

MR. REDMOND: And at my client's expense as you suggested; then, the only inconvenience is that we have had to resume with this witness at another time.

THE COMMISSIONER: Have you anything to say about this, Mr. Steer?

MR. STEER: No, sir, I think it would not be appropriate.

THE COMMISSIONER: All right, Mr. McLennan have you anything further to say?

MR. McLENNAN: I would comment on Mr. Redmond's submission, sir, that Mr. Achtem's evidence was given because he is a compellable witness. Mr. Achtem is a solicitor and

MR. McLENNAN: (Cont.) certainly his counsel is learned in the law and if his counsel wanted to take objection to Mr. Achtem's breach of the privilege which he had, certainly he was aware that he was breaching whatever privilege he could have otherwise maintained when he gave that evidence in response to questions or otherwise. The witness felt free to give that evidence and Mr. Redmond at that point felt free to allow him to give that evidence without claiming the obvious privilege that he was waiving. My submission is that the clear answer is that thereby he allows the solicitor to be called and not to ask what transpired between Mr. Jones and Mr. Achtem but simply to ask Mr. Jones, did Mr. Achtem say the things that he has testified here that he has said to you.

THE COMMISSIONER: And did you give an opinion.

MR. McLENNAN: And did you give the answer that Mr. Achtem says he received from you.

THE COMMISSIONER: It seems to me - Mr. Bodner, have you any views on this matter?

MR. BODNER: No, My Lord.

THE COMMISSIONER: All right, I'm going to hear the evidence anyway. If it comes to a question of cross-examination then you can have an application Mr. Redmond, at that time if you feel you can't cross-examine for some reason or other.

MR. McLENNAN: Mr. Reporter, can you locate the question which was asked near the beginning?

3-FWB-14
F.D. Jones - Examined by Mr. McLennan

THE REPORTER: (Reading.)

"Q Now, Mr. Achtem has testified before this inquiry that he instructed you that he was to receive a commission from the Alberta Housing Corporation - just let me finish my question Mr. Redmond and don't answer it Mr. Jones - that he was to receive a commission from the Alberta Housing Corporation; that he had received those instructions from one Robert Orysiuk who was the executive director of the Alberta Housing Corporation and that he had subsequently agreed to share this commission with Mr. Orysiuk and, just before you - my question to you, Mr. Jones, is did you receive that information from Mr. Achtem? Don't answer it."

MR. McLENNAN: My Lord, I think the witness ought to be directed to answer the question.

THE COMMISSIONER: He was asked the question and I ruled. I think it is proper for the witness to answer the question.

Q MR. McLENNAN: Did you receive that information, Mr. Jones?

A Am I so directed, My Lord?

THE COMMISSIONER: Yes.

A At the initial interview I didn't receive that information and any advice I gave Mr. Achtem was related solely to taxation matters.

Q Did you provide Mr. Achtem with any advice at all with regard

Q (Cont.) to the advisability or legality or correctness of a fee splitting arrangement between him and Mr. Orysiuk, the executive director of the Alberta Housing Corporation?

A I did not.

Q Did you assist, Mr. Jones, in the preparation - did you assist in the preparation of Exhibit 38, Mr. Jones?

A My Lord, I request the assistance of the Commissioner again. Is your ruling relating to privilege solely in connection with a privilege which may have existed in relation to the, to Mr. Achtem's activities vis a vis the Alberta Housing Corporation or does it also apply to whatever advice I gave him with respect to taxation matters?

THE COMMISSIONER: Well, I think it applies to taxation matters too. You tell us now you gave no advice on the other matter at all. So that would end that apparently. And now you did give some advice on taxation matters.

A I did, sir, yes.

THE COMMISSIONER: If there is any dispute about that, is there, Mr. Redmond, advice on taxation matters?

MR. REDMOND: Is there any dispute that he gave advice on taxation matters?

THE COMMISSIONER: Yes.

MR. REDMOND: No, sir.

THE COMMISSIONER: Well, I don't think there is any problem about that.

A There would be a privilege though relating to the advice I

A (Cont.) gave him on the taxation matter because potentially I suppose it could become litigious.

THE COMMISSIONER: The taxation matter as I understand it, Mr. Jones, is this. I'm going to get a large amount of money; and I want to know whether I can spread this over a period of five years as per agreement; there is an agreement to that effect that it would be spread over 5 years. And I understood that the point raised was whether he could spread this or not. Nothing to do with Mr. Orysiuk at all, is it?

A That is not entirely my understanding, My Lord. There was one other point involved.

MR. McLENNAN: I don't think it is something that I intend to ask questions about the taxation advice. I think the tax advice is beside the point as far as our terms of reference are concerned.

A I would be happy to testify I just don't want to breach a privilege that's all and I was asking Your Lordship if his ruling vis a vis the waiver of the privilege applied to my taxation advice.

THE COMMISSIONER: Well, of course if the taxation advice was to Mr. Achtem's individual position on taxation then I don't think we are interested in that.

MR. McLENNAN: I think that is the position, sir. I don't intend to lead evidence in that regard. Mr. Achtem has testified that he received the wording to use in the preparation of Exhibit 38 from Mr. Jones.

THE COMMISSIONER: Did he say --

A Exhibit 38 related at least in my opinion to taxation advice which I was giving him My Lord.

THE COMMISSIONER: Yes, that's what you have advised us and that's what I rather thought before you gave the evidence. Well, Mr. McLennan, do you want to ask, do you want to pursue this matter?

MR. McLENNAN: I only want to pursue it insofar as Mr. Achtem has testified. He has testified that Mr. Jones advised him as to the preparation of Exhibit 38; that is as to what its contents ought to be.

MR. McLENNAN: I think we can leave it, I don't think it's very important.

Q MR. McLENNAN: Mr. Jones, I am showing you an agreement between the Alberta Housing Corporation and Mr. Achtem, did he show you that?

A No sir, I have not seen that.

THE COMMISSIONER: That's Exhibit 2?

MR. McLENNAN: 3, sir.

I think that's all the questions I have of the witness.

THE COMMISSIONER: Does that raise some problems, Mr. Redmond?

MR. REDMOND: I still have the same problem I explained to Your Lordship before and I would like to have the information I was seeking before I cross-examine the witness.

THE COMMISSIONER: I find it so difficult to understand what the problem is in cross-examining, your client has said one thing and this gentleman says something which is just the contrary. There were only two of them there, weren't there?

MR. REDMOND: At that time, sir.

THE COMMISSIONER: That's the only time it's been mentioned here.

MR. REDMOND: So far, yes, sir.

THE COMMISSIONER: Perhaps you can lay some basis for another time when somebody else was there and advice was given.

MR. REDMOND: Very well sir, if you want me to proceed I am in the position where I can't very well leave Mr.

MR. REDMOND: (continued) Achtem without counsel, however I don't think I'm in the position where I should be proceeding.

MR. REDMOND EXAMINES THE WITNESS:

Q Mr. Jones, I think you said in the fall of 1969 you were carrying on a practise in which your specialty was tax law and you said you restricted your practise to those matters?

A Yes, sir.

Q Did you advertise to the public that your practise was restricted to matters of taxation?

A I think it was generally known.

Q You didn't advertise that fact publicly?

A We are forbidden from advertising, of course, but I think it was generally known.

Q And you are forbidden from holding yourself out as a person who only deals in specific aspects of law, aren't you?

A I think that I can restrict the practise which I wish to do to anything that I want to take, can't I?

Q You are forbidden from holding out to the public that you are restricting yourself to a particular kind of law practise in Alberta, aren't you, Mr. Jones?

A I don't know that, but I didn't advertise the fact that I was only doing tax, but I didn't take anything other than tax matters.

Q So far as any member of the public was concerned you were a member of the Law Society of Alberta and you were competent to advise on law, is that right?

A Except that I wouldn't advise on anything but tax, so if anyone came to me I would turn away anything that didn't have to do with tax.

Q Well sir, as far as your position is concerned you were qualified to advise as far as members of the public were concerned on anything that had to do with law, is that right?

A They could come to me but whether I was qualified, in my mind I was not, I restricted myself to tax.

Q As far as the public were concerned you were qualified?

A They could come to me and ask advice but I wouldn't give it except on tax.

Q As far as the public was concerned he had nothing to tell him until he got to your office that you dealt with nothing but tax?

A That's true.

Q All right, sir, now you got so far in your evidence as to say, as I wrote it down, that at the first interview you didn't receive certain information that Mr. McLennan outlined, and that your advice at that interview was confined to tax matters?

A Yes, sir.

Q You had you said you thought at least three interviews with Mr. Achtem?

A I believe that's true, the third may have just been a telephone conversation.

Q Now sir, this is some five years later and I presume that you are in the position that any other lawyer would be in that much after the fact, that you'd have some difficulty remembering the

Q (continued) specific words and questions that were put to you by any particular client five years ago?

A I think that's fair to say, yes.

Q Is it fair to say that as far as this particular case is concerned you haven't, in your mind, anything that puts it in an entirely different category than all your other cases, this is just another case?

A I don't understand the question.

Q Well there is nothing that makes the facts of the individual discussions in this case remain in your mind any better than discussions of some other case?

A That's true.

Q In fact I don't think you've got a file on it, have you?

A I don't, I didn't open a file.

Q Now sir, when Mr. Achtem came to you for his first interview, do you remember him telling you that he had an arrangement that he wanted to pay some, a share of some commissions he was earning to somebody else and could this be done?

A That isn't exactly what he said, now we are getting into the taxation matter, if you want me to answer and waive the privilege in relation to the taxation matter I'd be happy to.

Q What I'm asking you is do you remember exactly what he said at the first interview?

A Yes, exactly I remember the tenor of what he told me.

Q The general tenor of what he told you?

A That's right.

Q And sir, he came back to you again on two or three other

Q (continued) occasions and he also spoke to you on the telephone?

A That's correct.

Q Do you remember that on one of the occasions when Mr. Achtem was in your office at the university that you picked up the phone and spoke to someone that you referred to as Red Rutherford?

A No, there was no Red Rutherford, I believe you mean Mr. Doug Rutherford.

Q Doug Rutherford?

A Yes.

Q Do you remember speaking on the telephone to him?

A I believe it was him, I don't specifically remember that it was him, but if you are implying that it was, it could well have been, he was the Director of Taxation in the Edmonton District Office.

Q And do you recall,Mr. Jones, over what period of time the interviews and the telephone were spread out?

A As I recall, a relatively short period of time, meaning perhaps a couple of weeks, I'm guessing but I think it's a relatively short period of time.

Q It's a matter of weeks rather than months?

A Yes, sir.

Q Now do you remember, Mr. Jones, Mr. Achtem indicating to you that in addition to commissions he was also earning legal fees in the same transaction?

A No, I don't recall him saying that.

Q Can you say --

A My, he again was seeking advice, in my opinion, on strictly from a point of view in relation to the commissions.

Q You don't remember remarks he made then pointing out to you specifically that he wasn't asking for any advice about splitting any legal fees, but only about the commissions?

A That's correct, sir. I think, do I understand your question --

Q You don't remember specifically that he outlined that to you?

A I do not.

Q Now Mr. Jones, do you recall that at one of the interviews that you had with Mr. Achtem, that Mr. Achtem put to you the proposition that he was concerned because he had a family of six children and the other gentleman involved had two children, do you remember him mentioning that fact?

A No sir, I don't. In fact the first interview I don't believe he even mentioned who the other gentleman was.

Q No, but we are talking now about all of the interviews you had and I am simply asking you if you remember at one of the interviews --

A No sir, I don't.

Q -- that Mr. Achtem specifically pointed that fact out to you?

A No sir, I don't.

Q Do you remember that he didn't or do you just not recall?

A I don't recall. He may have, I don't recall.

Q And do you recall that in the same discussion when he mentioned the children he went on to say to you, and are you absolutely sure there is nothing wrong with this, Mr. Jones?

A No sir, I don't.

Q You don't recall?

A I don't recall that, and in any event my advice would be with respect, nothing wrong taxwise from that.

Q But you don't remember the discussion on that point at all?

A I don't remember the specific wordings, no.

Q So that if you don't recall whether the question was put that way, you don'trecall either, whether in answering it, if you did, you said as to tax matters?

A My advice only related to tax matters.

Q But in fact you don't remember that specific discussion at all?

A I don't remember that specific wording, no.

Q All right. Do I gather from what you have said, Mr. Jones, that the first interview you said you had with Mr. Achtem was pretty general, it was a brief, a pretty general interview and you didn't go into the details of the transaction very much?

A He phoned me up and said he had a tax problem and could he see me. I said yes, and he related, without getting into the specifics because I am unclear as to whether or not I can testify with respect to the tax advice; without getting into the specifics he related the facts insofar as my advice vis-a-vis tax is concerned, and that's all I gave him.

Q Yes, the only point I was trying to make was the first interview was a pretty brief interview?

A Yes sir, in fact all of them were.

Q You had subsequent interviews with him though?

A All of them were brief.

Q And how many were there?

A As I recall there were three, one of which may have been a telephone conversation. Two personal ones I can recall, I don't know whether the third one was personal or by telephone.

Q Now you spoke to Mr. Rutherford on the telephone, do you recall that?

A Again I spoke to a tax official and if you tell me it was Mr. Rutherford I will accept that.

Q Well you spoke to a tax official, did you speak to just one tax official or did you speak to more than one?

A I don't recall whether there was more than one or just the one.

Q You don't recall which one it was?

A No sir, it could easily have been Mr. Rutherford because I was in contact with the tax people extensively all during that period of time.

Q But you were in touch with somebody at the Taxation Department?

A Yes I was.

Q About Mr. Achtem's problem?

A I was, sir, yes.

Q Mr. Jones, apart from what questions you may have been asked by Mr. Achtem, this much is clear is it not, that you did not give him any advice to the effect that he should not enter into the transaction?

A As I understand it the transaction had already been entered into by the time he consulted me.

Q But you didn't tell him he shouldn't go ahead with it?

A Well, it was a fait accompli when he came.

Q Did you make any suggestion to him that it should not proceed any further?

A No, I did not.

Q Thank you.

Sir, do you remember having an interview with Mr. Achtem and a Mr. Stainton in March of this year?

A We had lunch, yes.

Q And you discussed this particular matter?

A Generally, yes.

Q Sir, in giving Mr. Achtem the tax advice which you say you did, did you indicate to him that he would have to produce documents in order for the Tax Department to consider the arrangements they were being asked to consider?

A Yes - well, corroboration I think was the word. In other words I indicated to him that the Tax Department would not just take his word for the arrangements which he indicated, and I told him that he would need some corroboration before they would give a ruling on it.

Q Sir, when you were interviewed by Mr. Stainton in March, did you deny to Mr. Stainton when he asked you that Mr. Achtem originally came to you and said, "Can we do this?"

A I think I indicated to Mr. Stainton at that meeting also that any advice I gave related only to taxation matters and solely to taxation matters.

Q Did you deny in that discussion with Mr. Stainton that Mr. Achtem put the question originally to you in those words "Can this be done" or "is this possible"?

THE COMMISSIONER: What are you asking him about? What could be done?

MR. REDMOND: Whether or not the arrangement that was proposed to share the commissions could be done.

Q MR. REDMOND: I'm just asking you whether you were asked about that in March of this year. You denied that that was the way you were originally asked for advice.

A I would think my -

Q Do you remember? I don't want to know what you think.

A I don't specifically remember, no -

Q That's in March of this year?

A Yes - again the specific wording.

Q When you were asked about the discussion concerning the question that was put to you, "Now we have families and we would like to be sure that there is nothing wrong with this," did you deny to Mr. Stainton that this discussion took place?

A I'm not too sure that question was put at that meeting.

Q You don't remember whether it was put or what you said?

A I don't remember that it was put.

Q Do you remember that it was not?

A No, sir.

Q Again that's in March of 1974?

A That's right.

Q You don't remember that discussion?

A I remember discussing generally the position but I again don't remember the specific wording. If that is what you are asking, no.

Q Do you remember in that interview, sir, indicating that this had all happened five years ago and you were pretty vague about the whole thing?

A Just as I indicated here on specific wording, yes.

MR. REDMOND: That is all, thank you.

MR. McLENNAN EXAMINES THE WITNESS:

Q Mr. Jones, in answer to Mr. Redmond's question as to whether you advised whether or not the transaction should or should not be proceeded with, your evidence was that it was your impression

that the transaction, whatever it was, had already been entered into?

A Yes, sir.

Q That is you are clear, are you, aside from not being able to remember what words were used by who, that the advisability of entering into the transaction was never in question?

A Indeed it was already done. That's why the tax problem arose.

MR. McLENNAN: Thank you.

MR. REDMOND: Arising out of that I have something, if I may, sir.

THE COMMISSIONER: All right.

MR. REDMOND EXAMINES THE WITNESS:

Q Mr. Jones, in the discussion I put to you earlier in which I think you said you were not able to remember, Mr. Achtem I suggest to you indicated to you that he had six children, the other chap had two children, that they were concerned, and Mr. Achtem asked you, "Are you sure there's nothing wrong with it," and didn't he add to that, "because if there is, it's not too late to abandon the whole thing"?

A No, sir. If you mean by anything wrong to it, relating to the veracity of the -

Q All I am asking -

A Well, if I can answer the question.

Q I don't think you are. I'm asking if you do remember if those words were included.

THE COMMISSIONER: Let him answer the question.

4-LL-4
F. D. Jones - Examined by Mr. Redmond

A May I proceed, My Lord.

THE COMMISSIONER: Yes.

A If you mean if there's anything wrong relating to the transaction between Mr. Orysiuk and Mr. Achtem, I gave no advice on that. If you mean if there's anything wrong with it from a tax point of view, I did give that.

Q MR. REDMOND: Mr. Jones, I'm afraid, as I thought, you're not answering my question. My question was: earlier I asked you if you remember the words that Mr. Achtem put to you in which he mentioned his concern and said, "Is there anything wrong" and I am asking you now whether you remember in addition to that he said to you, "And if there is, it's not too late to call the whole matter off." Do you remember those words?

A No, sir, I don't remember.

Q You don't remember whether they were said to you or not?

A No, sir.

THE COMMISSIONER: Is there anything further?

MR. McLENNAN: Nothing further, sir.

THE COMMISSIONER: Thank you, Mr. Jones.

MR. McLENNAN: Thank you, Mr. Jones.

(Witness retires.)

THE COMMISSIONER: I am not going to continue on now. We are an hour late. We will continue tomorrow morning.

(1:57 p.m. Hearing adjourns.)